TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 307.

PETER CONRAD, APPELLANT,

vs.

HIRAM K. HAZLETT AND ADAM WEAVER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF MISSOURI.

FILED NOVEMBER 23, 1870.

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1 MISSOURI DISTRICTS, *sct:*

Pleas before the honorable circuit court of the United States for the the districts of Missouri, at the April term, A. D. 1870.

Appeal from U. S. district court for the eastern district of Missouri.

HIRAM K. HAZLETT & ADAM WEAVER, libellants & appellees,
against
PETER CONRAD, RESPONDENT & APPELLANT.

Be it remembered that heretofore, to wit, on the fifth day of April, A. D. 1869, there was filed in the clerk's office of the circuit court of the United States for the districts of Missouri, the following transcript of the record and proceedings in the above-entitled cause, in the district court of the United States for the eastern district of Missouri, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Be it remembered that, on the ninth day of September, in the year of our Lord eighteen hundred and sixty-five, there was filed in the clerk's office of the district court of the United States of America, in and for the eastern district of Missouri, by Hiram K. Hazlett, and Adam Weaver, a libel in personam:

2 IN CASE NO. 1108 OF H. K. HAZLETT & ADAM Weaver, libellants,
against
PETER CONRAD, RESPONDENT.

Which libel is in the words and figures following, to wit:

Libel.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of the United States for the eastern district of Missouri.

To the honorable Samuel Treat, judge of the district court of the United States within and for the eastern district of Missouri:

The libel and complaint of Hiram K. Hazlett, and Adam Weaver, owners of the steamer Katie, (whereof Alexander J. McConnell lately was master,) her tackle, apparel, and furniture, against Peter Conrad of the city of St. Louis, Missouri, sole owner of the steamer "Des Moines," whereof said Peter Conrad lately was master, in a cause of collision civil and maratime, alleges as follows:

First. That, on the 22nd day of November, 1864, the said steamer "Katie," whereof Alexander J. McConnell then was master, left the port of Evansville, in the State of Indiana, destined on a voyage from thence to the port of Nashville, in the State of Tennessee, by way of the Ohio and Cumberland rivers, laden with a valuable cargo of merchandize, to the amount of about twenty thousand dollars in value—and that said steamer "Katie" was at the time a tight steamer and well-

built vessel of the burthen of one hundred and fifty tons or thereabouts, and was then completely rigged and sufficiently provided with
3 tackel, apparel, and furniture, and was fully and completely officered, manned, & equipped, and had her full complement of hands to navigate the said steamer on the voyage above mentioned.

Second. That, on the said 22nd day of November, 1865, [1864,] the said steamer, provided and manned as aforesaid, and whilst proceeding on her voyage down the Ohio River, a navigable stream of the United States for vessels of over twenty tons burthen, and about the hour of nine o'clock in the afternoon of said day, and near the head of Diamond Island, came in sight of the "Des Moines," a vessel of about four hundred tons burthen; that at the time said steamer "Des Moines" came in sight, she was ascending the Ohio River, at the distance from the "Katie" of from one quarter to half a mile, and near the right or Indiana shore of the said stream; that about the time said vessels came in sight of each other, the steamer "Des Moines" gave two sounds of her whistle; that at the time the Des Moines sounded her whistle, the steamer "Katie" was descending the Ohio River, near the middle of said stream; that the Katie immediately answered the signal of the Des Moines by giving two sounds of her whistle, and continued down stream, bearing towards the Kentucky or left shore of the Ohio River, and at the distance of three hundred yards from the Indiana shore; that a few moments thereafter, the steamer Des Moin's suddenly turned her course towards the Kentucky shore in the direction of the "Katie," and before a col-
4 lision could possibly be avoided by the "Katie," struck the said steamer "Katie" on the starboard bow, cutting into her almost to the capstan, which caused her rapidly to take water, and by reason whereof, she sank and became a total loss.

Third. That, at the time of the injury and damage mentioned in the preceeding article, it was impossible for the said steamer Katie to get out of the way of the said steamer Des Moin's; that the said steamer Katie was proceeding down the river in the course indicated by the signal given by the Des Moin's and answered by her; that there was ample room for the Des Moin's to steer clear and pass by the Katie without causing any collision or damage whatever, and that if the Des Moin's had pursued the course indicated by her signals and assented to by the "Katie," there would have been no collision or damage, and that said collision and damage was caused by no negligence or want of care or skill on the part of the Katie, or those having charge of her, but solely by the carelessness, negligence, and want of skill of those having charge of the said steamer "Des Moin's."

Fourth. That, at the time of the collision & damage aforesaid, the said Peter Conrad was master and sole owner of said steamer "Des Moin's."

Fifth. That the said steamer Katie, before and at the time of receiving the said damage from the said steamer "Des Moin's" as hereinbefore mentioned, was a tight, strong, and staunch vessel, and that
5 the said libellants then were and continued to be up to the time of her loss the true and lawful owners of the same, and of her tackel, apparel, & furniture, and that by reason of the carelessness, negligence, and want of skill of the said Peter Conrad and others having charge of the said steamer Des Moin's, and the collision caused by said carelessness, negligence, and want of skill aforesaid, the said libellants have sustained damage in the sum of forty thousand dollars, and that the said steamer Katie was of the value of forty thousand dollars.

Sixth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore libellants pray that process in due form of law according to the course of admiralty, and of this honorable court in causes of admiralty and maritime jurisdiction may issue against the said Peter Conrad, owner and master of said boat, and that he may be cited to appear and answer upon oath all and singular the matters propounded & alleged in this libel, and that this honorable court would be pleased to pronounce for the damages aforesaid and for costs, and to decree such other relief to the libellants as shall to law and justice appertain.

SHARP AND BROADHEAD,
Proctors for Libellants.

Hiram K. Hazlett, one of said libellants, on his oath states that the foregoing libel and the facts stated therein are true.

6 (Signed) H. K. HAZLETT.

Sworn to by said affiant before me at my office, in the city of St. Louis, in said district, this ninth day of September, A. D. 1865.

(Signed) F. A. WERNER,
Com'r U. S. Circuit Court, Districts of Missouri.

And thereupon on the eleventh day of September, A. D. 1865, there was issued out of the clerk's office of this district court, a monition in personam in the usual form according to the rules & practice of this court; which monition is in the words and figures following, to wit:

Monition.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

The President of the United States of America to the marshal of said United States in and for said eastern district, greeting:

Whereas a libel has been filed in the district court of the United States in and for the eastern district of Missouri, on the ninth day of September, A. D. eighteen hundred and sixty-five, by Hiram K. Hazlett, and Adam Weaver, libellants, against Peter Conrad, respondent, in a cause civil and maritime, of collision, for damages in the sum of forty thousand dollars, for the reasons and causes in said libel mentioned, and praying the usual process and monition of said district court in that behalf to be issued.

You are hereby commanded to admonish and summon the said Peter Conrad, that he be and appear at and before said district court at a return term thereof, to be begun and holden at said district courts-

7 room, in the city of St. Louis, in said district, on the first Monday, the second day of the month of October next, at ten o'clock in the forenoon, (when & where said cause will be heard,) then and there to answer the said libel, and make their allegations in that behalf. And of what you shall have done in the premises, do you also, then and there make return, together with this warrant.

Witness the Honorable Samuel Treat, judge of the district court of the United States of America in and for the eastern district of Missouri, this eleventh day of September, A. D. 1865.

Issued at office in the city of St. Louis, in said district, under the seal of said district court, the day & year last above written.

{ SEAL OF SAID DISTRICT COURT. } (Signed) BEN. F. HICKMAN,
Clerk of said Court.

[50 cents U. S. int. rev. stamp.]

And on the twenty-ninth day of September, in said last-mentioned year, there was filed in the clerk's office of this district court, by Peter Conrad, respondent herein, his exceptions to the libel filed herein; which exceptions are in the words and figures following, to wit:

Exceptions of respondent.

HIRAM K. HAZLETT ET AL., LIBELLANTS,
vs.
PETER CONRAD, RESPONDENT.

In the United States district court for the eastern district of Missouri.

To Honorable Samuel Treat, judge of said court:

The exceptions of Peter Conrad, respondent, to the libel of Hiram K. Hazlett and Adam Weaver, alledge that the said libel is informal
8 and insufficient, as follows:

First exception. That the same does not allege facts sufficient to constitute a cause of action in favor of libellants, or show that they are entitled to recover in this case for cargo on libellant's vessel at the time of the alleged collision.

Second exception. That the same does not allege that the cargo on the libellant's said vessel, or any part thereof, was injured, damaged, or lost by the alledged collision.

Third exception. That the same does not allege or state the value of the libellant's said vessel alleged to have been lost by said collision.

(Signed) JNO. H. RANKIN,
Proctor for Resp'd't.

And on the first Monday, the second day of October, A. D. 1865, the marshal of said United States in and for said district, returned into court the monition heretofore issued in this cause, together with his return of his proceedings thereon; and said monition, with said return, were thereupon filed in the clerk's office of said court on said last-named day, and the return of said marshal upon said monition is in the words and figures following to wit:

Marshal's return on monition.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I return on the within writ of monition in personam that I have executed the same by reading said writ, and delivering a certified copy of the libel in personam of the within-named libellants to the within named Peter Conrad, at St. Louis, within said district, on the
9 14th day of September, 1865.

(Signed) W. T. ELLEGOOD,
U. S. Marshal, E. Dist., Mo.,
By JOHN W. DRYDEN, *Dep'ty.*

And at a regular stated term of said district court begun and holden at the city of St. Louis, in said district, on the third Monday, the twentieth day of the month of November, A. D. 1865, the following proceedings took place in this cause on Tuesday, the nineteenth day of December, in said last-mentioned year, to wit:

IN CASE No. 1108 OF HIRAM K. HAZLETT et al., libellants, *against* PETER CONRAD, RESPONDENT. } No. 1108.

IN CASE No. 1109 OF JOSEPH SCHOENFELD, libellant, *against* PETER CONRAD, RESPONDENT. } No. 1109.

Order of consolidation of cases.

This day came said libellants, by James O. Broadhead and William N. Grover, esquires, their proctors, and also the respondent herein, by John H. Rankin, esq., his proctor, and, by consent of said proctors, the court ordered that the above named two cases be, and the same are hereby, consolidated for the purposes of trial thereof.

And on the twenty-fourth day of February, A. D. 1866, there was filed in the clerk's office of this district court, by Peter Conrad, respondent herein, his answer to the libel herein; which answer is in the words and figures following, to wit:

Respondent's answer.

HIRAM K. HAZLETT & ADAM WEAVER, LIBELLANTS, *vs.* PETER CONRAD, RESPONDENT.

In the United States district court, eastern district of Missouri.

To the Hon. Samuel Treat, judge of said court:

The answer of Peter Conrad to the libel of said Hiram K. Hazlett and Adam Weaver, in a cause of collision, alleges as follows:

First. That the first article of said libel is partly untrue; that said steamer "Katie" was not fully or completely officered, manned, or equipped, nor did she have her full complement of hands to navigate the said steamer on said voyage.

Second. That the second article of said libel is untrue, (except as to the date of the collision,) and that the truth is as hereinafter stated.

Third. That the third article of said libel is wholly untrue, & that the truth is as hereinafter stated.

Fourth. That, at the time when said collision occurred, respondent was the owner of the steamer "Des Moines."

Fifth. That the fifth article of said libel is untrue; that respondent is informed, believes, and charges the facts to be that the libellants were not at the time of her loss, or at any time, the true, lawful, or bona fide owners of said steamer Katie, but that William J. Kountz, of Pennsylvania, was the owner thereof. Respondent denies that she was, when she was lost, worth forty thousand dollars, or twenty thousand dollars, and denies that the said collision was caused by, or through, any want of care, skill, or prudence on the part of respondent, or
11 of any of the officers, crew, or persons navigating or managing the said steamer Des Moines; but respondent avers & charges that said collision was caused solely by the carelessness, negligence,

imprudence, and want of skill of those having charge of and navigating said steamer Katie; that if the said Katie had had her proper signal-lights out, been in her proper place in the river, and had answered the signals as given by the steamer "Des Moines," as hereinafter stated, no collision or injury would have occurred.

Sixth. Respondent states that, about nine o'clock on the night of the 22nd of November, 1864, the steamer "Des Moines," laden with United States troops, was ascending the Ohio River, running up near the Indiana side of the river, and in her proper place as an ascending vessel, when a short distance below the head of "Diamond Island," her pilot on watch saw something in the river, about one-half mile distant, which he supposed was a steamboat coming down on the Indiana side of the river, & about 100 or 125 yards from that shore. No signal-lights could be seen thereon. The pilot on the Des Moines at once blew his whistle twice, thereby indicating that the Des Moines would pass up along the Indiana shore; but he received no answer thereto, when he immediately stopped his engines, and ran very slowly. While the head-
way of the vessel Des Moines was running (and before it ran)
12 out, the said pilot & officers of the "Des Moin's" (several of whom were on watch) discovered that the vessel in sight was a steamer descending the river under full headway, when the engines of the Des Moines were both set to backing strongly; but the said descending vessel, which proved to be the said "Katie," came on down under full headway, without in any way or manner checking her speed, and when she came within a short distance of the Des Moines she turned her bow nearly across the channel (or squarely quartering) toward said island, and in this position she run into and upon the said steamer "Des Moines" on her larboard bow, and knocked her stem band loose, and thus, with full speed, went on tearing and breaking herself. She passed on towards said island, until she got near the middle of the river, then those on board signalled to the Des Moines that the "Katie" was sinking, when the Des Moines went to her and took her over to said Diamond Island, when she sunk; that, prior to and up to the said collision, no signals were given or answered by the pilot in charge of said Katie, nor was any signal-lights out on said Katie, to warn ascending vessels of her approach; that, prior to and at the time of said collision, said steamer Des Moines was skillfully & prudently navigated, was in her proper place, near the Indiana bank, and was running the course indicated by her signals; that, prior to and at the
time of the collision, said steamer "Katie" was not in her proper
13 place for a descending vessel, (she was running near the Indiana side, on the point of the bend, when her proper place was out in the middle of the main channel, at least three hundred yards from said Ind'ana shore;) that she never answered the signals, or two whistles, made as aforesaid by the Des Moines; that she had no signal-lights visible, to warn approaching vessels; that those in charge of the Katie made no effort whatever to avoid a collision, but ran the said Katie as aforesaid into and upon the Des Moines, to the damage of both said vessels as aforesaid; that said collision and damage was caused solely by the carelessness, negligence, unskillfulness, & recklessness of those in charge of said Katie, and not by or through any want of care & skill or prudence of those in charge of the Des Moines; that, at the time and prior to said collision, those in charge of the Des Moines did everything in their power to prevent said collision and injury, and that, after said collision, the Des Moines did all that could be done to save said Katie.

Seventh. Respondent says that he has no means of knowing what the value of said Katie was certainly, but he is informed, believes, and therefore charges the fact to be, that said steamer Katie was not worth eighteen thousand dollars when she was sunk as aforesaid.

14 Eighth. Respondent further states that the Des Moines was damaged by the said collision in the sum of five hundred dollars, the cost necessary to repair the damage done thereby; wherefore he asks that due proceedings being had in this cause, the said libel may be dismissed, & that this court would pronounce for the amount of damages he has sustained by said collision, viz, the sum of five hundred dollars, with interest, and costs of court, and for such other and further relief as he is in justice entitled to receive.

(Signed) J. H. RANKIN,
Proctor for Resp'd'ts.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Peter Conrad, the respondent, makes oath and says that the foregoing answer, and the matters and things therein as stated, is true.

(Signed) PETER CONRAD.

Subscribed & sworn to before me this 24th day of February, 1866.

(Signed) BEN. F. HICKMAN,
U. S. Com'r Mo. Dis.

And at a regular stated term of said circuit court begun and holden at the city of St. Louis, in said district, on the third Monday, the 20th day of May, A. D. 1867, the following further proceedings took place in this cause on Thursday, the 6th day of June, in said last-mentioned year, to wit:

IN CASE NO. 1108, OF HIRAM K. HAZLETT ET al., libellants, *ag'st* PETER CONRAD, RESPONDENT. } No. 1108.

Case set down for hearing.

On motion of James O. Broadhead, esquire, proctor for said libellants, the court ordered that this cause be, and the same is hereby, set

15 down for hearing on Monday, the seventeenth day of this month of June.

And at said last-mentioned regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Monday, the seventeenth day of June, A. D. 1867, viz:

IN CASE NO. 1108, OF HIRAM K. HAZLETT ET al., libellants, *against* PETER CONRAD, RESPONDENT. } No. 1108.

Continuance.

This day came the parties, by their respective proctors, and, by con-

sent, the court ordered that this cause be continued until the next term of this court.

And at a regular stated term of this district court begun and holden at the city of St. Louis, in said district, on the 3d Monday, the 18th day of November, A. D. 1867, the following further proceedings took place in this cause on said last-mentioned day, to wit:

IN CASE 1108, OF HIRAM K. HAZLETT ET AL., libellants, *against* PETER CONRAD, RESPONDENT. } No. 1108.

IN CASE 1109, OF JOSEPH SCHOENFELD, LIBELlant, *against* PETER CONRAD, RESPONDENT. } No. 1109.

Causes set for hearing.

This day came said libellants, by James O. Broadhead, esquire, their proctor, and on the motion of said proctor the court ordered that these causes, heretofore consolidated for the purposes of trial, be, and the same are hereby, set down for hearing on Thursday next, the twenty-first day of the present month of November.

16 And at said last-mentioned regular stated term of this district court begun and holden at the city of St. Louis, in said district, as aforesaid, the following further proceedings took place in this cause on Thursday, the 21st day of November, A. D. 1867, to wit:

IN CASE NO. 1108, OF HIRAM K. HAZLETT ET al., libellants, *against* PETER CONRAD, RESPONDENT. } No. 1108.

IN CASE NO. 1109, OF JOSEPH SCHOENFELD, LIbellant, *against* PETER CONRAD, RESPONDENT. } No. 1109.

Hearing of causes.

This day came said libellants, by James O. Broadhead, esquire, their proctor, and these causes, heretofore consolidated for the purposes of trial, having been set down for hearing on this day, the court ordered that the same be now heard. The libel was thereupon read, and also the answer of said respondent thereto; said libellants then read in evidence the depositions of Alexander J. McConnell and Gustavus Mellon, taken in these causes on behalf of said libellants, Hiram K. Hazlett et al.; and the hearing of said causes not being concluded at the hour of adjournment, the court ordered that the further hearing thereof be continued until to-morrow morning.

And at said last-mentioned regular stated term of this district court,

begun and holden as aforesaid, the following further proceedings took place on Friday, the 22d day of Nov., A. D. 1867, to wit:

17 IN CASE NO. 1108, OF HIRAM K. HAZLETT et al., libellants, *against* PETER CONRAD, RESPONDENT. } No. 1108.

IN CASE 1109, OF JOSEPH SHOENFELD, LIBELLANT, *against* PETER CONRAD, RESPONDENT. } No. 1109.

Further hearing of causes.

This day came again the parties, by their respective proctors, and the hearing of these causes having been resumed, the said libellants read in evidence the following depositions taken in these causes on behalf of said libellants, Hiram K. Hazlett et al. to wit: Of William Merriman, William Wolfendale, James A. Carroll, John J. Sinzick, Henry Frederick, Clark M. Shelby, John Biggs, John J. Tomlinson, Thomas E. Blake, Henry Scott, William M. Luty, Jason Boyce, Allen J. Duncan, James A. Damron, and James A. Damron in continuance, and also the exhibits annexed to and accompanying said depositions; and also gave in evidence the enrollment and license of said steamboat Katie.

The evidence for said libellants being closed, said respondent read in evidence the depositions of Thomas W. Singer and Peter Conrad, taken in these causes on behalf of said respondent; and the hearing of said causes not being concluded at the hour of adjournment, the court ordered that the further hearing thereof be continued until to-morrow morning.

And at said last-mentioned stated term of this district court begun and holden as aforesaid, the following further proceedings took
18 place on Saturday, the twenty-third day of November, in the year of our Lord 1867, to wit:

IN CASE NO. 1108, OF HIRAM K. HAZLETT ET al., libellants, *against* PETER CONRAD, RESPONDENT. } No. 1108.

IN CASE NO. 1109, OF JOSEPH SCHOENFELD, LIbellant, *against* PETER CONRAD, RESPONDENT. } No. 1109.

Further hearing.

This day came again the parties, by their respective proctors, and the hearing of these causes having been again resumed, the said respondent read in evidence the depositions of Robert A. Dunlop, John Manley, John Gillan, Timothy Crowley, John Hobach, Edward P. Inhoff, Henry H. Hicks, John M. Little, John L. Murphy, James Summerwell, and James J. Seibert, taken in these causes on behalf of said respondent, and also the exhibits annexed to and accompanying said deposi-

tions. The rules and regulations for the government of pilots, revised and adopted by the board of supervising inspectors, October 17, 1865, were also given in evidence.

The testimony on behalf of said respondent being closed, the court ordered that further proceedings herein be continued until Monday morning next.

And at said last-mentioned regular stated term of said district court begun and holden as aforesaid, the following further proceedings took place on Monday, the 25th day of November, A. D. 1867, to wit:

19 IN CASE No. 1108, OF HIRAM K. HAZLETT, et al., libellants, *against* PETER CONRAD, RESPONDENT. } No. 1108.

IN CASE No. 1109, OF JOSEPH SCHOENFELD, libellant, *against* PETER CONRAD, RESPONDENT. } No. 1109.

Further hearing of causes.

This day came again the parties, by their respective proctors, and the hearing of these causes having been again resumed, John H. Rankin, esquire, argued for the respondent, and James O. Broadhead, esquire, for said libellants.

Same submitted.

And the arguments of counsel having been concluded, said causes were thereupon submitted to the court; and the court not being fully advised in the premises, took time to consider of its judgments therein.

And at said last-mentioned regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place on Wednesday, the 27th day of November, A. D. 1867, to wit:

IN CASE No. 1108, OF HIRAM K. HAZLETT ET al., libellants, *against* PETER CONRAD, RESPONDENT. } No. 1108.

IN CASE No. 1109, OF JOSEPH SCHOENFELD, libellant, *against* PETER CONRAD, RESPONDENT. } No. 1109.

Interlocutory decree.

This day came again the parties, by their respective proctors, and the court, having examined the pleadings and proofs in these causes,
20 and being fully advised in the premises, adjudged and decreed that inasmuch as the fault of the said steamboats "Katie" and "Des Moines," in the matter of the collision mentioned in the libel in said causes was mutual, the damages sustained by reason of said col-

lision be apportioned and divided equally between the said libellants and respondent.

Order of reference to commissioner.

But as those damages are to the court unknown, it is ordered that it be referred to Horatio M. Jones, esquire, as a commissioner of this court in these causes, to ascertain the amount of such damages, and report thereon to the court with all convenient speed.

And at a special term of this district court, begun and holden at the city of St. Louis, in said district, on Tuesday, the 17th day of November, A. D. 1868, the following further proceedings took place in these causes on said last-mentioned day, to wit:

IN CAUSE NO. 1108, OF HIRAM K. HAZLETT et al., libellants, *against* PETER CONRAD, RESPONDENT. } No. 1108.

IN CAUSE NO. 1109, OF JOSEPH SCHOENFELD, libellant, *against* PETER CONRAD, RESPONDENT. } No. 1109.

Filing of report of commissioner.

This day came Horatio M. Jones, esquire, to whom it was referred as a commissioner of this court in these causes, to ascertain the amount of damages sustained by reason of the collision mentioned in the libel filed herein, and filed his report as such commissioner in said causes.

21 And said report of said commissioner, filed on said last-mentioned day, is in the words and figures following, to wit:

Commissioner's report.

In the district court of the United States, eastern district of Missouri.
In admiralty.

HIRAM K. HAZLETT & ADAM WEAVER, libellants, *v.* PETER CONRAD, RESPONDENT; & JOSEPH SCHOENFELD, LIBELLANT, *v.* PETER CONRAD, RESPONDENT. } Consolidated.

On reference as to damages.

The undersigned, to whom, by order made November 27, 1867, the above-entitled causes were referred, with instructions to ascertain and report the damages caused to the steamboats "Katie" and "Des Moines," and the cargoes thereof, by reason of the collision set forth in the libel and answer herein, the court having theretofore adjudged said

steamboats to have been both in fault in the matter of said collision, and that the damages caused by the same should be apportioned and divided equally between their respective owners, libellants and respondents herein, would respectfully report as follows:

1st. That, on the 15th day of May, 1868, he commenced the hearing of the matters referred to as above, the proctors of both parties, to wit, James O. Broadhead and J. H. Rankin, being present and consenting thereto; that said hearing was continued from time to time, until
22 June 22, 1868, when the testimony was concluded. The testimony introduced at the hearing and the rulings of the undersigned concerning the same, made at said hearing, will be more particularly set forth in a "memorandum" hereto attached.

2d. The commissioner finds and reports to the court that the damages caused to the steamboat "Katie" and her owners by the said collision with the steamboat "Des Moines" amount to the sum of twenty thousand six hundred and seventy dollars, ($20,670 00,) at which sum he fixes said damages. Perhaps some statement should be made as to the rules adopted by the commissioner in the estimation of these damages. If the "Katie" could have been raised and repaired after the collision, the cost of such raising and repairing would furnish the reasonable measure of the damages caused. This rule is inapplicable to the case of the Katie. The evidence adduced shows sufficiently clearly that the collision resulted in a total wreck of the Katie, in a loss to her owners of her entire value. An effort was made by her owners to raise her and put her afloat; but, owing to high water and ice, this effort was abandoned in the spring of 1865, and she never was raised. Some portion of her machinery was taken out by the wreckers employed, and came into the possession of the owners; but it appears—though upon this point generally the evidence is not as clear as it might be—that the expenses of wrecking exceeded the value of what was obtained from the
23 wreck. Hence, no deduction is made on account of the machinery obtained from the wreck. Believing that the collision resulted in a loss to the owners of the Katie of her entire value, her value at the date of the collision has been taken as a test and measure of the damages to be allowed. The estimates of the witnesses as to her value in November, A. D. 1864, varied greatly, ranging from $15,000 00 to $50,000 00. The commissioner believes her cost but a short time previous furnishes a better test of her value than vague general estimates. She was a new boat, finished in August, 1864. She cost, as the testimony shows, and is agreed, $20,670 00. That sum is believed to be the value of the Katie at the date of the collision. The respondent, Mr. Conrad, introduced testimony to show that, in August, 1864, two policies of insurance for $5,000 00 each were effected at Pittsburg, Pa., on the Katie, the boat being valued in each policy at $20,000 00. That after the loss an adjustment of the same was made by the owners of the Katie with the insurance companies, and a deduction was made on account of the value of the wreck of $750 00 on each policy, the entire value of the wreck being estimated at $3,000 00. This adjustment was made in one case January 28, 1865, in the other February 3d, 1865. It is claimed by respondent that $3,000 00 should be deducted from the amount ascertained to be the value of the Katie. The commissioner considers
24 this testimony in the light at most of an admission as to the value of the wreck; and it is further to be considered that this adjustment of loss took place before the efforts to raise and repair the steamboat were abandoned as fruitless. As a transaction between the insurer

and insured, it was a matter of no concern to respondent. As an admission, its effect is overthrown by after-occurring events.

3d. The commissioner finds and reports to the court that the damages caused to the steamboat "Des Moines" and her owners by the said collision with the "Katie" amount to the sum of five hundred and ninety-seven dollars, ($597 00.) The sum of $597 00 is the amount expended in the making of repairs rendered necessary by the said collision.

4th. No evidence whatever was introduced before the undersigned as to any other damages caused by the collision of said steamboats, except as to those estimated above, none as to loss or damage to cargo of either steamboat.

5th. Memorandum as to testimony introduced at hearing before commission and ruling of commissioner concerning the same:

MAY 15TH, 1868.—Hearing commenced. The depositions of James H. Carroll, John J. Sinzich, and A. J. McConnell were read by Mr. Broadhead in behalf of libellants. Mr. Rankin present in behalf of
25 respondent. Hearing adjourned until June 21, 1868.

JUNE 21, 1868.—Hearing resumed. Oral testimony of Thomas W. Singer taken by consent in behalf of respondent. This testimony reported phonographically by Mr. Walbridge, is annexed to this report and made part thereof. Further hearing adjourned until June 22, 1868.

JUNE 22, 1868.—Hearing resumed. Broadhead and Rankin present.

Mr. Broadhead read, in behalf of libellants, the depositions of Christopher R. Rudd, Edward D. Leezer, Thomas R. Boluss, Henry T. Dexter & Francis M. Humphrey.

Mr. Rankin, in behalf of respondent, objected to the reading of certain portions of the depositions of Rudd, Leezer, and Boluss, and requested the ruling of the commissioner as to them, and that a note of such ruling be made and reported to the court.

Mr. Rankin objected to the reading of the answers of Rudd to the 4th & 5th interrogatories or questions as irrelevant and incomplete. Objection overruled and these answers allowed to be read.

The objection of Mr. Rankin to the answer of Mr. Rudd to the first question, or interrogatory, or cross-examination as incompetent, as being mere hearsay unsustained, and that answer was ruled out; so also was the answer to the 2d question on reëxamination M. Rudd.

The objection of Mr. Rankin to the answer of Mr. Leezer to the 6th question or interrogatory on examination-in-chief, as incompetent & irrelevant, was overruled; so also was a similar objection to the
26 5th question on examination-in-chief of Mr. Boluss.

The objections noted above are the only ones made to the reading of the above-mentioned depositions, or any of them.

The testimony in behalf of libellants here closed.

Mr. Rankin then read in behalf of respondent the following depositions, to wit, those of E. D. Leezer, Joseph T. McReynolds, James Rees, William Chambers, Sam'l Morrow, Andrew Hartupee, Louis Wiederhold, Tho's Davage, William Nelson, J. B. Dallas, Isaac Gullet, William A. Shepard, and William P. Herbert.

Mr. Rankin also introduced an agreement signed by himself & Mr. Broadhead as to the original cost of the building and construction of the Katie. This agreement is hereto annexed, & marked Exhibit A.

The testimony here closed.

Summary.

1. Total damages to Katie, by collision, $20,670 00, portion thereof chargeable under decree to Des Moines, to wit, one half $10,335 00
2. Total damages to Des Moines, by collision, $597 00, portion thereof chargeable (under decree) to Katie, to wit, one half 298 50

Excess of damages chargeable to Des Moines & owners.. $10,036 50

All of which is respectfully submitted.

St. Louis, November 17, 1868.

HORATIO M. JONES,
Commissioner, &c.

Fee of commissioner, $.

And the testimony of Thomas W. Singer, annexed to the said
27 report of said commissioner, is in the words and figures following, to wit:

Testimony of T. W. Singer annexed to commissioner's report.

U. S. OF AMERICA,
State of Missouri, City and County of St. Louis, ss:

I certify that, on the 21st day of June, A. D. 1868, before me, L. L. Walbridge, a notary public in and for said county, at the law office of Jones & Hickman, in said city & county, between the usual hours of business, was produced and personally came before me Thomas W. Singer, witness on behalf of the libellant, to depose in a certain cause now pending in the district court of the U. S. wherein H. K. Hazlett et al., are libellants, and Peter Conrad is respondent, on behalf of respondent.

THOMAS W. SINGER, being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn to testify the whole truth touching the matter in controversy, deposes and says:

1st int. Where do you live?

A. St. Louis.

2d int. What is your business?

A. Steamboating.

3d int. How long have you been engaged in steamboating?

A. 15 to 16 years.

4th int. Has your deposition been taken before in this case?

A. Yes, sir.

5th int. In what capacity have you been engaged on steamboats?

A. Steamboat captain & clerk.

6th int. What is your age?

A. About 34.

7th int. Were you on the Des Moines at the time of the collision between her and the Katie?

A. Yes, sir.

8th int. Now, state the costs of repairing the Des Moines, the
28 aggregate and then exact item of cost, & who paid it.

A. I was clerk of her, and the whole amount was $597 for repairing damages caused by the Katy.

9th int. To whom was that paid?

A. $133 was paid to a lot of carpenters for a dock that was put on

her; $150 was paid for an iron stem-band; the bolts cost $140; the pumping of the dock out, to the laborers, $54, and the lumber and spikes $20; in all, $597. That was rendered necessary to repair the boat.

10th int. Were you engaged in doing after the collision?

A. On the Des Moines.

11th int. Where were you running?

A. From Nashville to Louisville.

12th int. How long?

A. I run there for 7 or 8 weeks, I suppose. I run along till I came down to Cairo the last time, about the 20th of January.

13th int. What was the stage of water where the Katy sunk compared with the time when she sunk and 3 or 4 weeks later?

A. It was between 3 and 4 feet lower than when she sunk.

14th int. How did you see her, say 4 weeks after she sunk?

A. I passed her about 6 or 7 times. I was running between Louisville, and Cairo, and Nashville.

15th int. Do you know about what the average depth of water was then?

A. The river was about 15 feet the night she sunk.

16th int. What was the average depth of water for 4 weeks time after she sunk?

29 A. The river fell about 3 or 4 feet, and left about 10 or 12 feet, and I saw the Katie every time I passed her. Part of her was out of water. Her boiler was just at the top of the water when she sunk. The last trip we came down, it was between 3 and 4 feet out.

17th int. Do you mean that the water was about even with the top of the vessel when she sunk?

A. Yes, sir.

18th int. Do you remember when she sunk?

A. The night of the 24th of November.

19th int. You were running off and on until that time?

A. I quit her, I think, about the 15th or 16th of January, 1865. I left on the 11th or 16th, and didn't go back any more after that for a couple of months.

(Signature waived.)

I further certify that the foregoing deposition of Thomas W. Singer was then and there reduced to writing by me in the presence of deponent in short hand, by consent of parties to said civil cause, who were respectively represented by counsel at the taking of said deposition; that it was then and there agreed in my presence by said counsel that said deponent's signature to his deposition might be waived, and that my transcript of said short-hand notes might be read in evidence with the same force and effect as if said transcript had been signed by said deponent. I further certify that the foregoing is a true and faithful transcript of said short-hand notes.

In testimony whereof I have hereunto set my hand and affixed my seal notarial this 26th day of June, A. D. 1868.

[SEAL.] (Signed) L. L. WALBRIDGE, *Notary.*

30 *Exhibit "A" annexed to report of commissioner.*

And the Exhibit "A" annexed to said report of said commissioner is in the words and figures following, to wit:

EXHIBIT A.—*H. M. J., Comm'r.*

HAZLETT ET AL.
vs.
CONRAD.

It is admitted that the costs in the building & construction of the Katie, in the spring of 1864, was $20,670.

SHARP & BROADHEAD,
Att'y for Libellants.
RANKIN, *for Resp'd'ts.*

And at a regular stated term of said district court, begun and holden at the city of St. Louis, in said district, on the third Monday, the 16th day of the month of November, A. D. 1868, the following further proceedings took place on Saturday, the 21st day of November, in said last-mentioned year, to wit:

IN CASE No. 1108, OF HIRAM K. HAZLETT ET al., libellants, *ag'st* PETER CONRAD, RESPONDENT. } No. 1108.

IN CASE No. 1109, OF JOSEPH SCHOENFELD, libellant, *ag'st* PETER CONRAD, RESPONDENT. } No. 1109.

Filing of exceptions to comm'r's report.

This day came the respondent in these causes, by John H. Rankin, esquire, his proctor, and files his exceptions to the report of Horatio M. Jones, esquire, commissioner of this court in said causes, filed herein on the seventeenth day of November last.

And said exceptions of said respondent to the report of said commissioner are in the words and figures following, to wit:

Exceptions to report.

HIRAM K. HAZLETT & ADAM WEAVER, LIBELlants,
vs.
PETER CONRAD, RESPONDENT.

31 In the United States district court, eastern district of Missouri.

To the Hon. Sam'l Treat, judge of said court:

The exception of respondent to the report and finding of H. M. Jones, esq., commissioner, &c., filed herein, alleges that said report & finding is erroneous, insufficient, and informal, as follows:

1st. exception. That the damages reported & found against the respondent are excessive. The said commissioner improperly & unlawfully refused to deduct the value of the wreck allowed by the underwriters to the owner of the Katie, W. J. Kountz, viz, three thousand dollars. That the conceeded value of the wreck, viz, three thousand dollars, should have been deducted from the assessed value of the Katie.

2d exception. That the evidence discloses that a portion of the wreck was saved, the value of which, less the costs of saving the same, should have been deducted from the ascertained value of the steamer Katie; and, further, that there was no proof offered by libellants that said vessel could not have been raised & repaired; that said report and finding is otherwise informal & insufficient.

(Signed) J. H. RANKIN,
Proctor for Resp'd't.

And at said last-mentioned regular stated term of this district court begun & holden as aforesaid, the following further proceedings took place on Tuesday, the 5th day of January, A. D. 1869, to wit:

32 IN CASE NO. 1108, OF HIRAM K. HAZLETT ET al., libellants, *ag'st* PETER CONRAD, RESPONDENT. } No. 1108.

IN CASE NO. 1109, OF JOSEPH SCHOENFELD, libellant, *ag'st* PETER CONRAD, RESPONDENT. } No. 1109.

Leave to file amended exceptions.

This day came again, the respondent, by John H. Rankin, esquire, his proctor, and on his motion the court ordered that said respondent have leave to file forthwith his amended exceptions to the report of Horatio M. Jones, esquire, commissioner of this court in these causes heretofore filed herein, which amended exceptions were thereupon accordingly filed.

And said amended exceptions filed on said last-mentioned day, are in the words & figures following, to wit:

Amended exceptions to comm'r's report.

HIRAM K. HAZLETT ET AL., LIBELLANTS, *vs.* PETER CONRAD, RESPONDENT.

In the United States district court, eastern district of Missouri.

To the Hon. Samuel Treat, judge of said court:

The exceptions of the respondent to the report and finding of the commissioner filed herein, alleged that the rulings, report, & finding of said commissioner is erroneous, informal, and insufficient, as follows:

First exception. That the rule of damages adopted by the said commissioner was, and is erroneous. That he should have declared the rule in this case to be the necessary costs of raising and repairing said steamboat Katie; that the testimony of E. D. Leezer, Thomas
33 Singer, James Rees, & F. L. Humphrey, read in evidence before said commissioner, not only proves & shows that a large part of said vessel was saved, but that she could have been raised & repaired at a cost of five thousand dollars. That the evidence offered & given by the owner of the Katie, on the question of when & what efforts they

made to raise the Katie, was too vague & uncertain to authorize said finding that she could not have been raised & repaired. That the finding of said commissioner, as stated in said report, "that said vessel Katie was a total loss," is not supported or warranted by the evidence in the case.

Second exception. That the finding & report of said commissioner is excessive, (if the cost of raising *& raising* said Katie shall not be by the court declared to be the true rule of damages,) but that her value was and is the correct one, then respondent alleges that the owner of the Katie should have been held to show when any part of the wreck was saved, what particular parts were saved, the costs & expenses of saving the same, & the value thereof; and that in default thereof said commissioner should have deducted the value of such portions of said wreck as respondent showed were saved and found in the possession of the libellants or owners of the Katie; that the testimony of said James Rees, F. L. Humphrey, & A. Shephard & W'm P. Herbert, read before said commissioner, showed that a large part of the machinery & property of said vessel were saved & in the possession of said Hazlett, libellants, (& one Kountz, the alleged owner of Katie.) That part so saved was of the value of at least three thousand dollars. That this sum should have been deducted by said commissioner from the agreed or ascertained value of said vessel prior to the collision. That as the Katie was also found to be in fault, the burden of proof as to the amount of damages she sustained by the collision was upon her owner or owners.

Third exception. That all that part of said report representing that the costs of raising that portion saved from the wreck exceeded the value of such portion saved is erroneous, & is not supported by the evidence.

(Signed) J. H. RANKIN,
Proctor for Resp'd't.

And at said last-mentioned regular stated term of this district court began and holden as aforesaid, the following further proceedings took place on Wednesday, the 6th day of January, in the year of our Lord eighteen hundred and sixty-nine, to wit:

34 IN CASE NO. 1108, OF HIRAM K. HAZLETT et al., libellants, *ag'st* PETER CONRAD, RESPONDENT. } No. 1108.

IN CASE NO. 1109, OF JOSEPH SCHOENFELD, libellant, *ag'st* PETER CONRAD, RESPONDENT. } No. 1109.

Hearing on exceptions to report.

This day came the parties, by their respective proctors, and on motion of respondent, by his proctor, the court ordered that the exceptions heretofore filed by said respondent to the report of Horatio M. Jones, esquire, commissioner of this court in these causes, be now heard. Said exceptions were thereupon read and argued by counsel and submitted to the court, which, not being fully advised in the premises, took time to consider of its judgment thereon.

And at said last mentioned regular stated term of this district court, begun and holden as aforesaid, the following further proceedings took place on Thursday, the seventh day of January, A. D. 1869, to wit:

IN CASE NO. 1108, OF HIRAM K. HAZLETT ET al., libellants, *ag'st* PETER CONRAD, RESPONDENT. } No. 1108.

IN CASE NO. 1109, OF JOSEPH SCHOENFELD, libellant, *ag'st* PETER CONRAD, RESPONDENT. } No. 1109.

Amended exceptions overruled.

This day came again the parties, by their respective proctors, and the court, upon consideration of the exceptions heretofore filed by said respondent to the report of Horatio M. Jones, esquire, commis-
35 sioner of this court, in this cause, and being fully advised of and concerning the same, ordered that the said exceptions be, and the same are hereby, overruled.

Confirmation of commissioner's report.

And on the motion of James O. Broadhead, esquire, proctor for said libellants, the court further ordered that said report of said commissioner be in all things confirmed.

Final decree.

And thereupon the court did order, adjudge, sentence, and decree that the said libellants, Hiram K. Hazlett and Adam Weaver, recover against the respondent, Peter Conrad, the sum of ($10,036 50) ten thousand and thirty-six dollars and fifty cents, being the amount of damages sustained by said libellants, by reason of the collision, in their libel set forth, as appears from the report of said commissioner, with interest for said amount from this day, together with one-half of the costs of this cause to be taxed, and that execution be issued against said respondent therefor.

And the court further ordered, adjudged, and decreed that said libellants pay the remaining one-half of the costs in this cause to be taxed, and that execution be issued against said libellants therefor.

IN CASE NO. 1109, OF JOSEPH SCHOENFELD, libellant, *ag'st* PETER CONRAD, RESPONDENT. } No. 1109.

Final decree in Schoenfeld case, No. 1109.

This day came again the parties, by their respective proctors, and the court, on consideration of the pleadings and proofs herein, and
36 of the report of Horatio M. Jones, esquire, commissioner of this court in this cause, and being fully advised in the premises, and it appearing to the court from said report of said commissioner, that no

damages have been ascertained to be due to the libellant in this cause, by reason of the collision, in his libel mentioned.

It is ordered, adjudged, and decreed that the said libellant take nothing by his proceedings herein, and that he pay the costs of this cause to be taxed, and that execution be issued for such costs.

And at said last-mentioned regular stated term of this district court begun and holden as aforesaid, the following further proceedings took place on Saturday, the 16th day of January, A. D. 1869, to wit:

IN CASE NO. 1108, OF HIRAM K. HAZLETT ET al., libellants, *ag'st* PETER CONRAD, RESPONDENT. } No. 1108.

Appeal presented and allowed.

This day came the respondent in this cause, by John H. Rankin, esquire, his proctor, and presented to the court his petition and notice of appeal in said cause, from this court to the circuit court of the United States, in and for the districts of Missouri, and the court, on consideration thereof, and on the motion of said proctor, ordered that said petition of appeal herein be, and the same is hereby, allowed.

Bond presented & approved.

Said respondent, by his said proctor, also presented to the court
37 his bond of appeal in said cause, and the court, in consideration thereof, approved said bond, and John Testor and Jacob Conrad, the sureties therein, and ordered that the record and proceedings in this cause be certified to the said circuit court.

Further time to file transcript.

On motion of the clerk of this court, the court ordered that the time for filing the transcript of appeal in this cause, from this court to said circuit court be extended to and including the first Monday, the sixth day of the month of April next.

And said petition of appeal was thereupon, on said 16th day of January, A. D. 1869, filed in the clerk's office of this court, and is in the words and figures following, to wit:

Appeal.

HIRAM K. HAZLETT & ADAM WEAVER, LIBELlants and appellees, *vs.* PETER CONRAD, RESPONDENT & APPELLANT, consolidated with JOSEPH SCHOENFELD, L'BT, *vs.* PETER CONRAD, RESP'D'T, &c. } No. 1108.

Circuit court of the United States for the districts of Missouri. In admiralty. No. 11.

To the honorable the circuit court of the United States for the districts of Missouri:

The appeal of the above-named appellant, Peter Conrad, respectfully

showeth: That, on the ninth day of September, eighteen hundred & sixty-five the above-named libellants, Hiram K. Hazlett & Adam Weaver, exhibited their libel in the district court of the United States for the eastern district of Missouri against the appellant, alleging,
38 among other things, that, on the 22d day of November, 1864, said libellants were the owners of the steamboat Katie; that she then left the port of Evansville, Indiana, bound on a voyage from thence to the port of Nashville, in the State of Tennessee, by way of the Ohio and Cumberland Rivers; that she was tight, staunch, & well built, and sufficiently provided with tackle, apparel, & furniture, and was fully and completely manned and equipped; that, on said 22d day of November, said vessel, whilst proceeding on her voyage down the Ohio River, a navigable stream of the United States for vessels of over twenty tons burthen, and about the hour of nine o'clock in the afternoon of said day, and near the head of Diamond Island, came in sight of the steamer "Des Moines," a vessel of about four hundred tons burthen; that, at the time said steamer Des Moines came in sight, she was ascending the Ohio River at the distance from the Katie of from one quarter to half a mile, and near the right or Indiana shore of said stream; that, about the time said vessel came in sight of each other, the Des Moines gave two whistles; that the Katie immediately answered the whistles of the Des Moines by giving two sounds of her whistles, & continued down stream, bearing towards the Kentuck' shore at a distance of three hundred yards from the Indiana shore; that a few moments thereafter the steamer Des Moines suddenly turned her
39 course towards the Kentucky shore in the direction of the Katie, on the starboard bow, cutting her and breaking her almost to the capstan, which caused her to take water, by reason whereof she sank & became a total loss; that, at the time of said collision, it was impossible for the Katie to get out of the way of the "Des Moines;" that there was ample room for the Des Moines to steer clear & pass by the Katie without causing a collision or damage, and that if she had pursued her course indicated by her signals, no collision or damage would have happened; that said collision & damage was caused solely by the carelessness and negligence, and want of skill of those in charge of the Des Moines, and not on account of any want of care or skill of those in charge of the Katie; that the appellant was the master and owner of the steamer Des Moines at the time of said collision; that at said time the libellants were the true and lawful owners of the Katie, and that by reason of said collision, &c., the libellants sustained damage in the sum of forty thousand ; and that said Katie was of the value of forty thousand dollars, and prayed that process issue according to the course of admiralty courts against said appellant, and that he be cited to appear & answer upon oath all & singular the matters propounded as aforesaid, and that the court would pronounce for
40 their said damages, &c.; that thereafter process issued and was served on the appellant.

Therefore, on the 24th of February, 1866, appellant filed his answer, & therein denied the allegations contained in said libel, and especially denying that said vessel, Katie, was fully or competently manned, officered, or equipped, or had a full complement of hands to navigate said steamer, and denying that the libellants were the true or bona fide owners of said Katie, or that she was worth forty thousand dollars; and denying that said collision was caused by, or through, any want of care, skill, or prudence on the part of respondent, or of any of the officers, crew, or persons navigating the steamer "Des Moines," but

avers and charges that said collision was caused solely by the carelessness, negligence, imprudence, & want of skill of those having charge of, and navigating, said steamer Katie; and therein denies that said Katie answered the signals made by the Des Moines at all; and denies that she had any signal-lights out; and avers that the Des Moines & those navigating her did everything in their power to prevent said collision & injury, and that said steamer Des Moines was damaged by said collision, and cost to repair such damage five hundred dollars, and prays that said libel be dismissed, and that the court would pronounce for said damages sustained by said Des Moines, &c.

41 That the said cause came to be heard before the Honorable Samuel Treat, judge of said district court, on or about the 21st of November, 1867, upon the depositions & proofs taken in said cause, and the testimony & proofs adduced by the respective parties; and the said judge having advised & considered thereon, on the 27th day of November, 1867, among other things found, decided, and decreed that both said vessels in the matter of said collision, and the cause thereof, were in fault, and that the damages caused thereby, & the costs of this case, should be divided; one-half should be paid by libellants, & the other half thereof should be paid by appellant.

That under said finding & decree a reference was had to Horatio M. Jones, esq., as commissioner, to ascertain and report to said court the amount of damage done by said collision; that, on the 17th day of March, 1868, said commissioner filed his report, alleging, among other things, that under said decree he found the damages to the Katie, caused by said collision, to amount to the sum of $20,670, the value of the Katie; that the Des Moines was damaged, thereby, in the sum of $597 00; that from the one-half of said damages done to the Katie must be deducted the one-half of said damages sustained by the Des Moines, and that the amount for which the appellant would be liable to the libellants under his ruling, finding, and decree of said court, was the sum of ten thousand & thirty-six $\frac{50}{100}$ dollars.

42 That the appellant, in due time, filed his exceptions to the ruling, finding, and report of said commissioner, all of which exceptions said court overruled; and on the 7th day of January, 1869, confirmed said report, and made a final decree or sentence in said cause, whereby it was, among other things, sentenced & decreed that the libellants recover against this appellant the said sum of ten thousand and thirty-six $\frac{50}{100}$ dollars, ($10,036 50,) with one-half the costs, (and that the libellants should pay the other half of said costs,) and ordered execution against said appellants therefor.

And this appellant is advised and insists that said decrees are erroneous, inasmuch as the same was not warranted by the allegations & proofs in said cause, & as the said libellant *were* not entitled to recover any sum as damages in the premises.

And this appellant, for these and other reasons, appeal from the whole of the said decree in favor of Hiram K. Hazlett & Adam Weaver & others, to the next United States circuit court to be held in said districts, and on said appeal he intends only to have the said cause heard anew on the same pleadings and the same proofs, and seek a new decision of the facts upon the evidence offered in the court below, as well as a different ruling upon the law of said case decided by said district court.

And he prays that the record and proceedings may be returned to said circuit court, and that the said decree, and every part thereof,

43 may be reversed, with costs, or such other decrees thereupon

made as to the said circuit court shall seem just, and that the said appellees may be condemned to pay to this appellant his costs & damages in the premises.

(Signed) JNO. H. RANKIN,
Proctor for Appellant.

And said bond of said appellant herein was also, on said 16th day of January, A. D. 1869, filed in the clerk's office of this district court, and is in the words and figures following, to wit:

Appellant's bond.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of said United States in & for said district. In case No. 1108, A. D. 1865.

HIRAM K. HAZLETT & ADAM WEAVER, (CONSOLIDATED with Joseph Schoenefild,) libellants, &c.
vs.
PETER CONRAD, RESP'D'T & APPELLANT.

Know all men by these presents that we, Peter Conrad, as principal, and John Testor & Jacob Conrad, as sureties, are held and firmly bound unto Hiram K. Hazlett & Adam Weaver, the above-named libellants, in the sum of twelve thousand dollars, to the payment of which we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our respective seals, and dated this 16th day of January, A. D. eighteen hundred & sixty-nine.

The condition of the above obligation is such, that whereas on the seventh day of January, eighteen hundred & sixty-nine, in said cause, wherein said Hiram K. Hazlett & Adam Weaver were libellants,
44 a decree was entered against said Peter Conrad for the sum of ten thousand and thirty-six $\frac{50}{100}$ dollars, and one-half the costs of said suit, from which decree said Peter Conrad, respondent, has appealed to the circuit court of the United States for the districts of Missouri, to be held on the first Monday of April, A. D. 1869.

Now, if the said appellant shall prosecute said appeal with effect, and pay such amount with interest and costs and all expenses and damages that may be adjudged against him on said appeal, then this obligation shall be void; but otherwise to remain in full force and virtue.

In witness whereof we hereunto severally subscribe our names and affix our respective seals at the city of St. Louis, in said district, this 19th day of January, A. D. 1869.

(Signed) PETER CONRAD. [SEAL.]
JOHN TESTOR. [SEAL.]
JACOB CONRAD. [SEAL.]

Approved Jan'y 16, 1869.
(Signed) SAMUEL TREAT, *Judge.*

(End of the record.)

45 DEPOSITIONS ON PART OF LIBELLANTS.

Depositions for the libellants read upon the hearing of the cause.

A. J. McConnell.

The deposition of A. J. McConnell, on behalf of the libellants, taken before Edmund T. Allen, esquire, a notary public within and for the county of St. Louis, Missouri, at the city of St. Louis, in the eastern district of Missouri, on the 22d day of February, A. D. 1866.

ALEXANDER J. MCCONNELL, of lawful age, deposeth and saith in answer to interrogatories and cross-interrogatories as follows, viz:

1st int. You may state where you at present reside.

A. I have been making St. Louis my headquarters for the last 5 months.

2d int. What business are you engaged in?

A. Steamboating.

3d int. How long have you been engaged in the business of steamboating?

A. Ten years.

4th int. In what capacity have you acted during that time?

A. Clerk and captain.

5th int. Do you know the steamer Katie?

A. Yes, sir.

6th int. Who was captain of her in 1864?

A. I was.

7th int. Where was she trading—between what points—on what rivers?

A. Between Evansville, Indiana, and Nashville, Tennessee.

8th int. What sized boat was she?

A. She is what we call a 300-ton boat.

9th int. Navigating the waters of the Ohio & Cumberland riv-
46 ers at that time?

A. Yes, sir.

10th int. Who was master of the Katie at the time of the collision between her & the Des Moines in November, 1864?

A. I was.

11th int. What voyage was she bound on at that time?

A. To Nashville, from Evansville.

12th int. I will get you to state all the circumstances of the collision as near as you can recollect them now.

A. We left Evansville about 7 o'clock [p. m.] on the 27th [22d] of November, 1864. Well, nothing occurred until about 9 o'clock. While I was standing at the office window talking to the clerk, I heard the whistle of another boat sounding, and I stepped to the door to go outside to see what it was, and our whistle just then sounded. I might have said that the other boat sounded two whistles at the time; our whistle sounded with two whistles—two blows. I then walked forward and saw the lights of a boat coming up the river on the Indiana side. She was so far away that I did'nt apprehend any danger at all, and I went down below—down on deck—for the purpose of looking at the cattle, as they sometimes get down and tramp each other. I crossed over the forecastle, picked up a lamp, and went aft. When I got to about the forward end of the boilers our stopping bell rung, and I supposed there was something wrong, and went forward as fast as possible. When

I got pretty near to the forward hatch I saw this boat coming into
47 us, within, I think, about 40 feet of us, at right angles. The boat struck us, and she struck us on the side that the steps were. I thought that I could not get up stairs that way. I went aft through the engine-room, and went up the after steps. The other boat had backed out at that time towards the Indiana shore, distant from 100 to 150 yards. I then ran down on to the steps to ascertain what damage was done. I heard the water rushing in very fast. I went up on the roof, and the pilot had rung the bell to go ahead on her. I told him to stop her. I put my head inside the pilot-house to do so. We had three lady passengers and several gentlemen passengers. I was afraid to alarm them, and told the pilot to blow his whistle for a signal of distress as the boat was sinking. He did so several times, and the other boat came to our assistance. We were then laying broadside in the river. Our passengers got over on the other boat immediately.

13 int. That is, on to the Des Moines?

A. Yes, sir; it proved to be the Des Moines. They got a line to us, and towed us towards the shore, or the island, rather, it happened to be Diamond Island. A line was put out and made fast to shore. We left a watchman and two or three men—2 men, I believe—with him. Went on board the Des Moines, and went up to Evansville for the purpose of *making* [entering] a protest. The water then was on the cabin floor [from] about midships aft.

14th int. What time of night was this?

A. 9 o'clock—it occurred about 9 o'clock.

15th int. How far was the Des Moines from the Katie when
48 you first saw her?

A. When I first saw her, I think she was a third of a mile at least.

16th int. How far was she when she first sounded her whistle?

A. Well, she could'nt have been more than a few hundred yards, [further,] if that far. I stepped out just after she sounded her whistle. It did'nt take me more than 15 seconds. We were going down river at the rate of about 13 miles an hour, and she was coming up at the rate of about 10. I suppose it might have been more or less.

17th int. How near was she to the Indiana shore when you first saw her?

A. Close in to the shore; could'nt tell exactly how close, but she appeared close in to the shore.

18th int. What was the shape of the river at the point of collision?

A. Well, it is kind of a false bend between the island and the shore. There is an island in the river there.

19th int. What is the name of that island?

A. Diamond Island. I have a kind of a rough sketch of it here.

20th int. I understand you, then, that there is a bend in the river immediately above Diamond Island?

A. Yes.

21st int. How far above that island is the point of the bend?

A. Well, I think it is about a mile from the head of the island up to West Franklin, where you can see the head of the island, coming down.

22nd int. Had you passed the point of the bend when you first saw the Des Moines?

A. Yes, sir.

23d int. Where is the channel in that part of the river—near
49 the Indiana shore, or further over?

A. Close to the Indiana shore.

24th int. What did the two whistles signify?

A. To take the larboard.

25 int. Those whistles were first sounded by the Des Moines?

A. Yes, sir.

26th int. Do you know anything about the width of the channel in that part of the river?

A. No. I couldn't tell anything about the width of the channel.

27th int. What was the stage of the river at that time?

A. About 3 fathoms.

28th int. When you say the stage of the river was 3 fathoms, do you mean 3 fathoms in the channel?

A. That is what it is considered.

29th int. What was the course of the Katie at the time she was struck by the Des Moines—I mean in reference to the channel?

A. Well, I couldn't tell whether she was in the channel or not. I don't know where the channel is there [exactly.] She was well out in the river.

30th int. Was she going down the river or diagonally across towards the island?

A. When I saw the other boat she was about straight down the river—our boat was, when I saw the other boat.

31st int. Did your boat make a shear then?

A. Not that I know of. I was down below at the time. I don't know whether she took a shear or not.

32d int. What part of the Katie was struck by the Des Moines?

A. She was struck forward what might be called the bow.

50 33d int. What was the extent of the damage done by the collision—what injury was done to the boat?

A. She went into the hull sufficiently to cause her to take water very fast, and sink. I think she run over near on to the capstan. I knew there was a hole sufficiently large for her to sink in 4 or 5 minutes.

34th int. How long after the collision before she sunk?

A. Not more than 5 minutes, I think, sir; I will say about.

35 int. What was the consequence of the collision?

A. The consequence of the collision was, that she was sunk.

36th int. Did she run any distance down the river after the collision?

A. No, sir; not to my knowledge. She didn't run; she floated nearly a mile below where she sunk, or where the boats came together.

37th int. What was the course of the Des Moines at the time of the collision in reference to the channel of the river?

A. I don't know, sir. I was down below, where I couldn't tell—on the side of the boat, on the guard. I couldn't tell what the direction of either of the boats was at the time. All I know is, that our boat was well out in the river.

38th int. Could you state what distance your boat was from the Indiana shore at the time of the collision?

A. I couldn't tell exactly.

39th int. Who was pilot on the Katie at the time of the collision?

A. Gustavus Mellen.

40th int. Do you know him well?

A. Yes.

41st int. How long has he been engaged as a pilot?

A. I don't know, sir.

42d int. Do you know anything of his competency as a pilot?

(Objected to by respondent as incompetent.)

51 A. Yes, sir; a good pilot—an excellent pilot; handles a boat as well as any man I know of.

43d int. How long had he been pilot on that boat in that trade?

A. In the neighborhood of two months.

44th int. Who was the engineer?

A. The engineer on watch was W'm Merriman.

45th int. What other hands were there on the boat—officers?

A. She had a full crew.

46th int. What was the extent of the damage to the boat by the collision?

A. She has never been raised; she still lays sunken.

47th int. What you would call a total loss then?

A. Yes; what is termed a total loss.

48th int. What was the value of the Katie at that time?

A. Well, I am at a loss to tell you. Indeed, I don't know her value.

49th int. How old a boat was she?

A. A little over three months old.

50th int. Were you acquainted with the value of steamboats at that time?

A. I did not know what she cost; had no interest in her, and could not tell the value of her. She was a boat got up on a new principle, that is, there was only one other boat like her on the river, and I don't think she was considered as valuable as some other boats. She had only one chimney; she was got up on the principle of putting the boilers aft, with only one chimney. There is one other boat of the same kind that has been very successful.

52 51st int. Did she carry lights in front?

(Objected to by the respondent as leading.)

A. Yes, sir. She had *large* [regular] signal lights, and carried them forward that night. Before that we had been in the habit of carrying them on the chimney, but one of the horns or cranes was broken off, and we carried them forward afterwards, and that night they were being carried forward; they were attached to nails driven into the nosing of the hurricane roof.

52d int. I think you stated in your first statement that when the Des Moines struck the Katie the Des Moines backed towards the Indiana shore?

A. Yes, sir.

53 int. What distance from the point of collision did she go towards the Indiana shore before she came to your relief?

A. She went back from our boat from 100 to 150 yards.

54th int. When the whistle was first sounded by the Des Moines, what answer did the Katie give?

A. She answered with 2 whistles—distinct whistles.

55th int. What does that signify?

A. Keep to the larboard.

56th int. I think you stated you couldn't tell the distance from the Indiana shore of the point of collision?

A. No, sir; I could not.

57th int. Was there any change made in the course of the Katie after those whistles were sounded?

A. Not to my knowledge, sir.

58th int. At the time the Katie answered the signal of the Des
53 Moines, how far was the Katie from the Indiana shore?

A. I am not prepared to say. I know she was well out in

the river; I might say from $\frac{1}{3}$ to $\frac{1}{2}$ of the distance of the width of the river.

59th int. How far was the Des Moines from the Indiana shore at that time?

A. I can't say, sir. She appeared to be close in.

60th int. Can you say whether the Des Moines, after the signals were given and answered, changed her course?

A. I couldn't, sir. I wasn't in a position to notice. I immediately went below, and went on the opposite side of our boat from her; but I know when she struck us that she was at right angles with us.

61st int. You saw the Des Moines at the time of the whistles?

A. Just immediately after the whistles. Yes, sir.

62d int. Can you say whether, if the Katie had continued the course that she was pursuing, and the Des Moines the course she was pursuing, at the time the signal was given and answered, the boats would have come in collision or not?

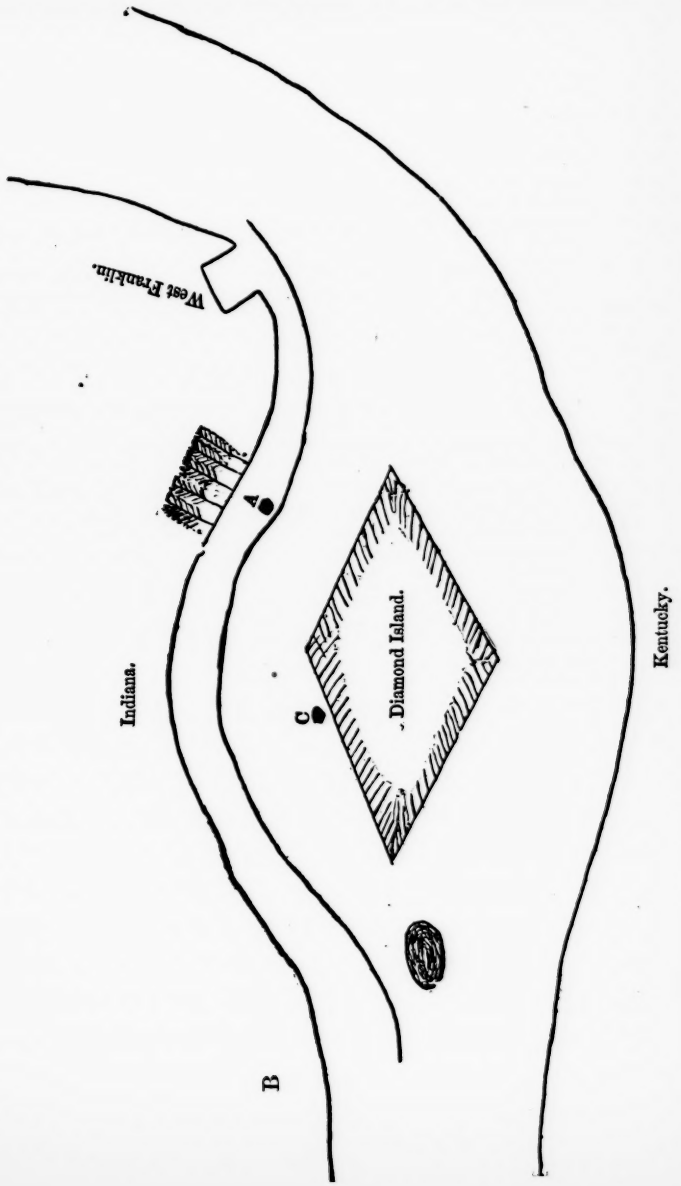
A. They couldn't have come together if they had continued their respective courses.

63d int. Take the diagram, (hereto annexed,) marked B, and state if that represents the shape of the river and island at the point of collision, and about what part of the river the collision took place?

A. It represents it, nearly as I can remember, and the point of collision occurred about opposite those trees, at the point on the diagram, marked A.

64th int. Did you make that diagram yourself?

54 A. Yes, sir. The point, marked C, is where the boat laid, and where she now lays, or did lay 6 months ago, when I passed there.


West Franklin.
A
Indiana.
C
Diamond Island.
Kentucky.
B

Cross-examination by the respondent:

1st x-int. The collision took place on the 22d of November, 1864?

A. Yes, sir.

2d x-int. How long did you remain at the place where the boat sunk?

A. I remained there until the Des Moines started up.

3d x-int. How long?

A. In the neighborhood of two hours after the boat sunk.

4th x-int. When did you go back there?

A. I went back there the next evening.

5th x-int. And remained there how long then?

A. I remained there all night. I have forgotten what time the next day it was.

55 6th x-int. You left the next day?

A. Yes; and went to Evansville.

7th x-int. How long were you running in that trade?

A. About 10 *months*, [weeks.]

8th x-int. With this boat only?

A. Yes.

9th x-q. You were on no other boat between Evansville and Nashville?

A. No, sir; [not before.]

10 x-q. You are not a pilot?

A. No, sir.

11 x-q. Don't pretend to understand the channels of the river?

A. No; only I know the boats run close to the shore there for the channel.

12th x-q. How long have you been boating?

A. 10 years.

13th x-q. But only 10 *months* [weeks] in that trade?

A. Yes; but I have passed up and down there.

14th x-q. In what trade were you running?

A. Afterwards I run from there to Nashville in another steamer, and I have run over that water considerable, to Pittsburg, Cincinnati, and from St. Louis to Pittsburg and Nashville.

15th x-q. When did you make this map, "B"?

A. To-day.

16th x-q. Who owned that boat—the Katie?

A. She was owned by W'm J. Kuntz—no, by Hazzlitt and Weaver.

17th x-int. Do you know W'm J. Kuntz?

A. Yes.

18th x-int. Where does he reside?

A. In Alleghany City.

19th x-int. What part of that boat did W'm J. Kuntz own?

(Objected to by the libellant.)

A. I don't know, sir.

20th x-int. Do you know whether he owned any part of her?

A. I do not, if it comes down to the point.

56 21st x-int. Do you know that he did not own any part of her?

A. I do not. I only know from the papers.

22d x-int. You speak from the papers only?

A. Yes.

23d x-int. Don't you know that W'm J. Kuntz built that boat?

A. I know that he superintended the building of the boat, and that I got my position through him.

24th x-int. He employed you, did he?

A. Yes, sir. I know he superintended the construction of her.
25th x-int. Where was she built?
A. At Pittsburg.
26th x-int. Who swore to her papers?
A. I don't understand that.
27th x-int. Who made the affidavit of the ownership of the vessel when the papers were taken out?
A. Mr. Weaver.
28th x-int. Where does he reside?
A. Pittsburg.
29th x-int. You know him personally?
A. Yes.
30th x-int. What interest in that boat did he actually own?
A. I don't know anything only by the papers.
31st x-int. How does it stand by the papers?
A. I have forgotten, sir. I don't remember.
32d x-int. What interest did Hazlett own of that boat?
A. I don't remember how the papers were made out.
33d x-int. You don't know who furnished the money to build her?
A. No.
34th x-int. Then, really, you know nothing about her only what you saw in the papers?
A. That's all.
35th x-int. Who superintended her building?
A. Capt. Kuntz.
36th x-int. Where was she built, did you say?
A. Pittsburg; finished there. Her hull was built up the river
57 at some place. I don't know where.
37th x-int. Did you go on her as soon as she came out?
A. Yes. I brought her out from Pittsburg.
38th x-int. You didn't own anything on her?
A. No, sir.
39th x-int. Don't you know that Hazlett & Weaver were both men of no means?
A. No, sir; I didn't know it.
40th x-int. Do you know they are men of means?
A. I supposed Hazlett had means. I didn't know anything about Weaver.
41st x-int. You didn't know actually how the other man was?
A. No; I didn't know how much money he had.
42d x-int. Or whether he had any?
A. I didn't know it of my own knowledge. I think he had.
43d x-int. What was the length of that boat?
A. She was we call of "lo-ck" length.
44th x-int. Describe her as nearly as you can.
A. I think she was 150 feet, or upwards—between that and 160—in length, 26 feet beam, and 3½ feet hold, to the best of my recollection.
45th x-int. How many boilers?
A. Two tubular boilers.
46th x-int. How many engines?
A. Two—that is, for propelling purposes, and one for the nigger.
47th x-int. How many chimneys?
A. One.
48th x-int. Where was her pilot-house?
A. Forward of the chimney.
49th x-int. Only one chimney?

58 A. That's all. All the cabin was forward of the chimney.

50th x-int. How much of a cabin had you on her?

A. We had what is termed a half cabin.

51st x-int. How long was she out before she sunk?

A. 3 months.

52d x-int. How many pilots did you have on board?

A. 2.

53rd x-int. Who were they?

A. Gustavus Mellon and James Dawson.

54th x-int. Who was on watch at the time of the accident?

A. Gustavus Mellon.

55th x-int. Where was your other pilot?

A. In bed, sir.

56th x-int. About what time was it when you left Evansville?

A. 7 o'clock.

57th x-int. You had run about two hours?

A. Yes, sir.

58th x-int. Which of your pilots was on watch when your boat left Evansville?

A. Mellon.

59th x-int. He came out on watch and run on up to the time of the collision?

A. Yes, sir.

60th x-int. Had you had any difficulty, just before you left Evansville on that trip, with any body?

A. No, sir—yes, our mate had a difficulty. I didn't have any difficulty. Our mate and former second clerk had a difficulty. That was in the forenoon. We didn't leave until 7 o'clock in the evening.

61st x-int. Do you know when your pilot left the wheel of your boat just before the collision?

A. I don't know that he left it at all.

59 62d x-int. You don't know when he left it?

A. He left it after the other boat came alongside of us, after the collision occurred, and after he blowed the whistle. He blowed the whistle himself, through my instructions, as a signal of distress, and the boat came alongside, and he afterwards left the pilot-house. The boat listed so much that the stove fell down, and set the pilot-house on fire, and the irons we had to protect us from bullets fell down also. He got out and jumped into the river.

63rd x-int. Who did?

A. Pilot Mellon. He jumped towards the other boat, and missed it and fell into the river. I jumped at the same time. I jumped about 8 feet, and caught hold of the side of the boat.

64th x-int. You didn't see the two vessels, then, from the time that the Des Moines blowed her whistle up to the time of the collision; that is, you were not standing watching her?

A. No; I didn't have any opportunity. After the whistle sounded I went below, and was on the other side.

65th x-int. You then really don't know what course either of the vessels run after that?

A. All I know is the other boat came into us at right angles.

66th x-int. Was the concussion a very severe one?

A. Yes, sir; it was very heavy.

67th x-int. You don't know the width of the river there?

A. No; I do not.

60 68th x-int. How soon did the vessels part company after they had been together?

A. Well, not more than a minute and a half.

69th x-int. Were they together as much as that?

A. I think so.

70th x-int. A minute and a half?

A. A minute or a minute and a half. I was forward on our boat, and I run aft, went up on to the roof, and the other boat was just backing away then—probably a minute.

71st x-int. You run back and went up though the engine-room, and when you got up there the Des Moines was backing off?

A. Yes.

72nd x-int. Now, when you got up there, which way did the bow of your boat lay?

A. Towards the island.

73d x-int. Floating down?

A. Yes, sir; broadside in the river, with her bow towards the island.

74th x-int. When you signalled for the Des Moines to come, how far was she then from you?

A. From 100 to 150 yards, directly astern of us, towards the Indiana shore.

75th x-int. She was then above you?

A. No; nearly square, a little below.

76th x-int. By the time you got up on the roof, was your boat above her or below her in the channel?

A. Above her.

77th x-int. Still above her?

A. Yes, sir.

78th x-int. When you saw her when you first came up on the roof, how far then was the Des Moines from the Indiana bank?

61 A. I don't know, sir. You mean after we collided? I can't tell how far she was from the shore.

79th x-int. Can you tell about how far the Des Moines towed your boat, after she came to you, before you came to the place where you sunk? She stayed with you until you sunk?

A. Yes; and got a line out on shore for us; well, I couldn't say, sir; indeed, we were floating at the time and we were floating down into the bend.

80th x-int. And floating very rapidly, were you not?

A. Yes; there is a strong current there.

81st x-int. You were floating, you say, into the bend?

A. Yes, that is the way the current draws there.

82nd x-int. About how long was she running you across to the bar?

A. Well, it has been so long ago, that I have almost forgotten, I think probably 10 or 15 minutes.

83rd x-int. Is there good water there?

A. There was then a plenty of water. The river was high. The bar gets dry in low water where the boat settled.

84th x-int. How far were you from the Des Moines when you ordered your engines to back?

A. I didn't order her to back at all.

85th x-int. Didn't you order the pilot to back your boat?

A. No.

86th x-int. Or the stopping bell?

A. No. I was down below when he rung the stopping bell.

87th x-int. You didn't order your boat to back at all?

62 A. No. I wasn't in a place to order it. I was on the lower deck.

88th x-int. Who gave the orders, then, just prior to the collision?

A. I don't know; I don't know that there were any given.

89th x-int. Did you hear your stopping bell ring?

A. Yes.

90th x-int. How far were you off then, when your stopping bell rung; how far were your boats apart?

A. I couldn't see the other boat then. I was on the opposite side from her, down on the lower deck.

91st x-int. Then you couldn't see what was going on?

A. No. I couldn't see what the bell was for, but anticipated some danger, and I started forward; then, on the guard, when I got forward, I saw this boat coming into us at a distance of about 40 feet. There was a barrel of whisky on the guard, I anticipated a shock, and I caught hold of it to steady myself.

92nd x-int. On what side of your boat were the steps?

A. On the starboard.

93rd x-int. Where were they?

A. In the usual place for them, on the starboard side.

94th x-int. How far from the capstan?

A. 12 feet, I suppose.

95th x-int. Were these the steps you went up?

A. No. I went aft through the engine-room, and then came forward, and went down these steps, and looked at the break to see what damage was done, and heard the water rushing in.

63 96th x-int. At what speed had you been running just prior to this?

A. About 13 miles an hour.

97th x-int. Did you hear any slow bell ring?

A. No. There had been no bell rung from the time we left Evansville until then. We had made no landing.

98th x-int. Just before the collision you heard no bell?

A. No. No bells rung. I know that there couldn't have been, for I would have noticed it from the motion of the boat.

99th x-int. Where were you when you heard the first signal from the other boat?

A. Standing at the office window, talking to the clerk.

100th x-int. Who was on watch as master?

A. I was.

101st x-int. Who was upon look-out?

A. Nobody, that I know of.

102d x-int. There was nobody on look-out but the pilot?

A. No, sir.

103rd x-int. Was that pilot duly sober when you left Evansville?

A. I think he was—he backed the boat out as nicely as any one could have done it. He was tried right there too; the Vulcan was laying there with several barges in tow, and we had to lay there until she backed out; she rounded to, and just as soon as she got out into the river, we backed out towards her, and she was in our way, and the pilot stopped her at the proper time; he didn't run on to her, as a drunken man would do.

104th x-int. Had not both of your pilots been drinking pretty strongly before you went out?

64 A. No, sir; not that I know of.

105th x-int. You didn't notice that either of them had been drinking?

A. No.

106th x-int. Have you not stated that that collision occurred because your pilots were not sober?

A. No, sir.

107th x-int. To nobody?

A. No, sir; I never did.

108th x-int. Did you not tell the pilot that he was not fit for duty?

A. No.

109th x-int. Neither of them?

A. No sir.

110th x-int. Were your engineers sober?

The one that was on watch was.

111th x-int. What was the other one doing?

A. I don't think the other one was quite sober. I take that from seeing him before we left port.

112th x-int. Which engineer was on watch?

A. The second engineer.

113th x-int. What is his name?

A. Merriman.

114th x-int. Did you see him when he went on watch?

A. I don't remember, indeed, whether I saw him or not. I saw him during the afternoon, though, and knew that there was nothing the matter with him.

115th x-int. But you didn't see him just before you started, did you?

A. Not that I remember.

116th x-int. Do you not know, as a matter of fact, that these men were all drinking, just before you left?

A. I do not know anything of the kind.

117th x-int. Who did the shooting just before you left there?

A. That was the 2d clerk.

65 118th x-int. At whom?

A. At the mate. That was done in the forenoon.

119th x-int. Who was the 2d clerk?

A. His name was Kuntz. I had discharged him that morning.

120th x-int. Where does he live?

A. At Wellsville, Ohio. He was a nephew of Capt. Kuntz. He and the mate had a falling out. I had discharged him. He had been out on a spree the night before. I had hired another second clerk. He thought it was the mate's fault that he was put off the boat, and he jumped into him, and shot at him. He was not on the boat at the time of the collision. The only man on the boat engaged in the fracas, was the mate.

121st x-int. What was the name of your first engineer?

A. David Moore.

122nd x-int. Where was he at the time of the collision?

A. I can't say. I don't know; I suppose he was in bed; that was where he ought to be.

123rd x-int. Who was running the engines?

A. Mr. Merriman.

124th x-int. Running both of them.

A. Yes, sir. We never have but two engineers.

125th x-int. You had two engineers?

A. Yes.

126th x-int. This Merriman was on watch, and the pilot at the wheel, they were the only parties that were on watch?

A. We had a watchman also, I don't know what part of the boat he was in at the time.

127th x-int. What was his name?

66 A. Wilson. He was a new watchman on the boat; that was the reason I went below to look after the cattle.

128th x-int. You don't know where he was at the time of the collision?

A. I don't know where he was, but I know half an hour before that he was upon the boiler deck, and the signal lamps on the outside had become a little chilled.

129th x-int. Where did those lamps hang?

A. The nails were driven into the nosing of the hurricane roof, one on each side, the old style.

130th x-int. Was there any screen near them?

A. A screen inside of them.

131st x-int. When and where did you look at those lamps?

A. I looked at them not more than half an hour before the collision.

132nd x-int. What was the size of the screen on the inside?

A. It extended from the hurricane roof down to the boiler deck, clear round.

133rd x-int. Some eight feet long?

A. Yes.

134th x-int. Heavy linen?

A. Yes; burlaps it is called.

135th x-int. Did you at any time go in front to see whether these lamps were visible?

A. No. I could see them from the boiler deck.

136th x-int. At what distance from them?

A. At a distance of 15 feet.

137th x-int. Down below them—in front of them?

A. No, behind them. I know that the screen was up and that

67 the lamps were burning brightly, for I had them brought into the cabin, not more than half an hour before that, if that long, and had the wicks picked up and the oil warmed up—the oil had become chilled, and wouldn't burn well.

138th x-int. When the two vessels came together, did you notice the movements of the Des Moines with her engines?

A. No; I did not. I was on the opposite side from her; all I saw was her head.

139th x-int. Did you hear any of her bells ringing?

A. No, sir.

140th x-int. Then your boat was not backing out at the time of the collision?

A. No, sir; he was not backing; he didn't have time from the time the stopping bell rung—from the time I was apprised of any danger. I didn't hear the *stopping* [backing] bell ring, if it did ring at all.

141st x-int. You heard no slow bells before the collision?

A. No; no bells at all.

142nd x-int. No bell to stop?

A. None.

143rd x-int. And none to back?

A. None, with the exception of the stopping bell immediately before the collision.

144th x-int. That was the only bell that you heard ring?

A. The only bell, sir.

145th x-int. You say that boat is still laying there. Do you know that now?

A. I am not positive of it now; I have seen her there sunk.

146th x-int. How long after the collision?

A. Six or 9 months after. I never was close to her; it was
68 only in passing. That was the closest I have ever been to her since the cabin floated off of her.

147th x-int. You don't know now, from your own knowledge, that the underwriters have raised that machinery and taken it away?

I have never heard of such a thing.

148th x-int. Did you see the machinery there 9 months after the collision?

A. I was not close enough to see it.

149th x-int. Did you not see the sale advertised of the wreck of that steamer?

A. Yes.

150th x-int. Who bought her?

A. I don't know that.

151st x-int. When was that sale?

A. I have forgotten; I don't remember when it was, now. I remember seeing a notice of the sale, but I don't remember when it was.

152nd x-int. Was the Des Moines long in coming up to you after your signal of distress?

A. No, sir; she came very rapidly.

153rd x-int. Your vessel was sinking rapidly all the time?

A. Yes; she was sinking pretty rapidly.

154th x-int. You say in your examination-in-chief, that the Des Moines backed off, after the collision, towards the Indiana shore, from 100 to 150 yards—which was the nearest?

A. It was night, and I couldn't exactly tell.

155th x-int. Might it not have been 50 yards?

A. No; it was more than that.

69 156th x-int. How do you get at that number of yards—100 or 150?

A. My judgment.

157th x-int. Could you see the shore plainly?

A. Yes; it was a starlight night; you could see the outlines of the shore plainly.

158th x-int. You say there was no change in the course of the Katie after she answered the signal, that you know of?

A. I don't know anything about the change; I didn't stop to see; I went below.

159th x-int. You were examined under oath, at Louisville, before the inspector there, were you not?

A. Yes, sir.

160th x-int. Did you promote the institution of this suit—did you have it brought here?

A. No, sir.

161st x-int. Were you out on the roof when your boat answered the signal?

A. No; I was standing at the office when the other boat blew.

162d x-int. You didn't go out on to the roof when you heard the signal?

A. I went *down* [out] on the boiler deck.

163rd x-int. You could see from there?

A. Yes; just as I was stepping out, to the best of my recollection, our boat answered with two whistles.

164th x-int. Was the current swift there—where you collided?

A. Not particularly so, any more than any other part of the river. The current was very strong, the river being very high.

165th x-int. It was more than a medium stream?

A. Yes; considerably so.

166th x-int. Was the Indiana bank a bluff bank?

70 A. Yes; the Indiana bank there is very bluff.

167th x-int. How high was it at that place, at that time?

A. I think 15 or 20 feet at that time.

168th x-int. Sufficiently high to cast a shadow on the water?

A. Yes, sir; there was trees there too.

169th x-int. Were those trees large or small?

A. Large trees, tall trees—called by the pilots a bunch of timber.

170th x-int. And would cast quite a shade on the water?

A. Yes, sir.

171st x-int. Was your boat heavily loaded?

A. No, sir; what I would call half loaded.

172nd x-int. How many revolutions would it require as she was then loaded, in that current, and at that speed, for you to start your boat backing up stream?

A. I never calculated anything of the kind, but I think it would take her two minutes to stop her headway.

173rd x-int. That would require about how many revolutions?

A. About 30.

174th x-int. After your bell rang to stop, how far would she naturally float in that water, loaded as she then was, and at that stream—how far would she run before her headway would be checked—after you had stopped both engines?

A. I think she would run from ¼ to ⅓ of a mile; she would have her headway gradually decreasing all the time.

175th x-int. Then it is clear that your boat's headway was not checked when the two vessels came together?

71 A. Not a particle. Her engines were just about stopping. When you stop one you stop both. One throttle-valve governs both of them.

176th x-int. Do you remember what you stated, in your examination before the commissioner, was the position of your vessel just before the collision?

A. Well, I presumed that she was straight up and down the river. As near as I can judge, she was, when I took observation.

177th x-int. Just before the collision you presume she was straight up and down the river?

A. I know she was when I looked at the other boat; they were at a distance of ⅓ of a mile apart.

178th x-int. I mean just before the collision?

A. I can't say what position she was in then.

179th x-int. Whether she was straight up and down or quartering across?

A. No, sir.

180th x-int. When you made oath before the commission, it was shortly after the accident?

A. Yes.

190th x-int. You would be likely to know then, would you.

A. Yes.

191st x-int. Do you recollect of making this statement? "I don't know; I have no means of knowing whether the engines of the Des

Moines were stopped or not, but I think the bow of the Katie was pointing towards the island as if endeavoring to get away."

A. I did think so from all I heard.

192nd x-int. Did you make that statement?

72 A. I don't remember exactly, but I know I thought so from all I heard.

193rd x-int. You don't remember making that statement?

A. I don't remember whether I said that or not, but I know that was my feeling in regard to it.

194th x-int. That she was trying to get away?

A. Yes; I think so yet.

195th x-int. You don't know whether you made that statement or not?

A. I don't remember of it, but that was my feeling at the time, and it is yet, too.

196th x-int. That the Katie was endeavoring to get away from the Des Moines?

A. Yes; that is what was told me by parties in the pilot-house—by both the pilot and *engineer* [mate.]

197th x-int. You have seen your affidavit since, haven't you

A. No, sir; I don't think I have ever read it since.

198th x-int. Have you heard it read since?

A. No, sir.

199th x-int. When you speak of this shade from the hill there, and trees, you make calculation in your distance for that shade, do you?

A. I don't understand the question, sir.

200th x-int. The shades from these banks and these knots of trees are very deceiving, are they not?

A. Yes, sir.

201st x-int. They deceive, sometimes, the best pilots?

73 A. Yes.

202nd x-int. In making your calculation of 100 or 150 yards, in regard to the position of the boats, you make calculation for that shade?

A. If I was to be governed by shade there I would have made it more than that.

203rd x-int. What did you do?

A. That was my opinion, sir, at the time, and is yet, that they were 100 or 150 yards apart.

204th x-int. That the collision took place then 100 or 150 yards from the Indiana shore?

A. No; not anything of the kind.

205th x-int. How far was it then?

A. I don't know, sir; I didn't notice it. I wasn't in position to notice it at the time. I was on the opposite side. I was on the island side, myself. The other boat was on the Indiana side, and run into us from that side.

206th x-int. When you first saw the Des Moines she was close into the Indiana shore, was she?

A. Yes, sir.

207th x-int. Did you have any assistance in making this map, "B"?

A. No, sir.

208th x-int. Just run it off yourself?

A. Yes; from memory.

209th x-int. Have you got this island right?

A. I swear to it, from the best of my judgment and memory. That is the way I think it is.

74 210th x-int. You locate the collision then where, with reference to the island?

A. A short distance below the head of the island.

211th x-int. How short?

A. I can't tell you, exactly.

212th x-int. About how much below the head of the island?

A. Probably from 500 to 800 yards.

213th x-int. You heard no bell ring before the collision?

A. None, except one just before we came together.

214th x-int. You heard no bells before that one within quarter of an hour?

A. No, sir.

215th x-int. The bend you have spoken of just at the head of the island, is it a sharp one?

A. A pretty sharp bend.

216th x-int. How long was the Des Moines, in your vision, when you first saw her? You say you saw her lights.

A. It occupied about a minute from the time I first saw her until I crossed over out of her sight.

217th x-int. Was she within the range of your vision all of that minute?

A. No, sir. I was going down the steps; I didn't anticipate any danger, and therefore was not looking at her. The whistles were sounded properly, and so I thought everything was right—everything was right, so far as that goes.

218th x-int. You didn't have a riot at Evansville before you left?

A. No.

219th x-int. No trouble with the wharf-master there?

A. No, sir. I never had.

75 220th x-int. Or your pilots, or engineers, or mate?

A. I never heard anything of the kind.

221st x-int. Just name who was on your boat—everybody that was on your boat?

A. That's pretty hard to do.

222nd x-int. Well, all that you remember?

A I don't remember any of the deck hands' or any of the firemen's names. The pilots were Gustavus Mellon, James Damron; the engineers, David More and W'm Merriman; the mate was W'm Wolfendall; watchman, Wilson; the clerk, John Stockdale; the 2nd clerk was W'm Cunningham. Stockdale lived in Beaver Corner, Penn. I have understood he died. The 2nd clerk lives at Tennessee Rolling Mills, Ky. The carpenter was Henry Frederick, of Evansville, I think.

223rd x-int. Who was your bar-keeper that trip?

A. Judge Blake—he went by the name of "Judge"—of Canton, Ky. The passengers were Henry Smith, of Caseyville Ky., Col. Brown of Shawneetown, Ill., Judge Asby and wife—I think that is the name—living near Eddyville, Ky., and a Miss O'Hara, of Eddyville, Ky., was on board; and my wife was on board, and Maj. Tomlinson, of Canton, Ky., I think he was on board at the time.

224th x-int. What boat are you on now?

A. Minnie.

225th x-int. How long have you been on her?

76 A. 5 months.

226th x-int. Running [on] her?

A. Yes. In that neighborhood; not quite that long.

227th x-int. Running on the Minnie.

A. Yes, sir. She is one of Mepham's boats.

228th x-int. You don't know the width of the channel right where the collision took place?

A. I don't know the width of the channel.

229 x-int. Well, the width of the river, where there was good water?

A. There was good water there for 300 yards, at least, from the Indiana shore.

230th x-int. Was there not good water for near 600 yards?

A. Well, there was for 300. I wouldn't say for any more than that. I don't know but there was for more than that, but I am certain there was for 300 yards. The river is pretty wide there, between the shore and the island, at that stage of the water. I never noticed it at a very low stage.

(Before signing the above deposition the deponent desires to make the following corrections: In the answer to the 12th int., "the 27th day of November" should be the "22d day of November," and p. m. should be inserted after "o'clock;" in the answer to the 13th int., before the word "about," should be inserted the word "from;" in answer to the 16th int., after the word "yards," should be inserted the word "further;"
77 in answer to the 29th int., after the word "there," should be inserted the word "exactly;" in answer to the 51st int. the word "large" should be "regular;" in answer to the 7th and 13th x-int. the word "months" should be "weeks;" in answer to the 9th x-int. the words "not before" should be added; in answer to 140th x-int. the word "stopping," in next to the last line, should be "backing;" in answer to the 162nd x-int. the word "down" should be "out;" in answer to the 196th int. the word "engineer" should be "mate." The deponent desires further to add that he is not now captain of the Minnie, as would appear by his answers to 224th, 225th, 226th, and 227th int., but is clerk of said boat.)

(Signed) A. J. McCONNELL.

Gustavus Mellon.

The deposition of Gustavus Mellon, on behalf of the libellants, taken before Lillie L. Walbridge, esquire, a notary public of St. Louis County, Missouri, at the city of St. Louis, in said eastern district, on the eleventh day of February, A. D. 1867.

GUSTAVUS MELLON, occupation pilot, deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows:

1st int. What is your business?

A. Pilot.

2nd int. How long have you been engaged in that business?

A. I have had my license now between 12 and 13 years.

3d int. On what rivers have you piloted?

A. The Cumberland, Ohio, and Tennessee.

4th int. What is your license for?

A. The Tennessee River from Columbus to Louisville—from Louisville to Nashville.

78 5th int. And then on the Ohio?

A. Yes, sir—that is, on the Ohio River from Louisville to Nashville—and from Nashville to Columbus on the Mississippi River.

6th int. Were you a pilot on the steamer Katie in 1865?

A. Yes, sir.

7th int. Had you a license at that time?

A. Yes, sir.

8th int. Were you on her at the time of the collision with the Des Moines on the Ohio River?

A. Yes, sir.

9th int. At what time did that collision take place?

A. Well, it was about 9 o'clock—I reckon, about 8 or 9.

10th int. What day of the month, and what month?

A. I cannot recollect what day of the month it was, nor what month, exactly.

11th int. What season of the year was it?

A. In the fall of the year.

12th int. Who was pilot on watch at the time of the collision?

A. I was on watch, sir.

13th int. State all the circumstances of the collision, according to the best of your recollection; how it occurred, what you did when you saw the Des Moines first, what she did, and everything about it.

A. I was coming down the Ohio River when I first saw the Des Moines in sight. I suppose we were about two miles apart. Our mate was standing beside me in the pilot-house talking to me. I *seen* the light of this boat and heard the signal blown. I remarked to him at the time that that boat was running mighty strange for a man
79 that knew anything about the river, and where he was going, and I remarked to him, I would give him a wide berth. She blew her whistle for the larboard shore. I answered; and we kept that way till she got within about three hundred yards of us. She was coming up; she turned then, when about three hundred yards from us, at a kind of right-angle, and struck us aft of the capstan on the starboard side.

14th int. How far did she run into you?

A She cut us down so we sunk within ten or fifteen minutes; I don't know exactly the time.

15th int. How far were you from the Des Moines when she sheared, as you say, and turned across the river?

A. I suppose when she first commenced shearing out, probably two hundred and fifty or three hundred yards apart. I *stopt* our boat, and *agin* we got her backing, why, she was into us, and we didn't hardly have time to back or do anything.

16th int. What had you done towards stopping her before she struck?

A. I rang the bell to stop her, and the gong to ship up and back her.

17th int. Do you know whether she was *stopt*?

A. I think she was; her engines, her headway was not *stopt*.

18th int. How far were you from the Indiana shore at the time the Des Moines struck you?

A. At the time she struck she was about the middle of the river, 250 or 300 yards.

80 19th int. At the time she turned her course across the river, how far would your boat have been from her if she had continued in a *strait* course up the river? what would the distance have been between the line of your boat and the line of the Des Moines, had you continued along your course and she hers?

A. I suppose 250 yards apart, at the least calculation.

20th int. Where was the current or channel in the river at that point?

A. Right down the right hand shore, going down—the Indiana shore.

21st int. How was the stage of water at that time in the Ohio River?

A. Tolerably fair stage. I suppose 8 or 9 feet on the bars there at the island.

22nd int. Plenty of water where the Katie was at the time she was struck?

A. Yes, sir; we were in good water.

23rd int. How far was the Katie from the bar at the time?

A. Right on the edge of the bar, following the edge of the bar round at the time she struck.

24th int. Where did she sink?

A. Right below Priest's Landing, on the island.

25th int. How far from where she was struck did she sink?

A. I suppose half a mile.

26th int. Did the Katie continue on her course after she was struck?

A. Well, I was going ahead on her all the time. After she struck us she backed away from us, towards the other bank. I was going
81 ahead on her (the Katie) all the time trying to run her on the island if we could. She was sinking so fast Capt. McConnell told me to signal the Des Moines to come back alongside and take the people off. I blowed the whistle, but she didn't come. The captain told me to signal again. I signaled again, and they came at the second signal of distress and helped them off.

27th int. What did she do then?

A. Took the people off and helped tow us into shore.

28th int. Any of the cargo taken off?

A. I don't know whether there was or not. There was a good many men aboard of her I know while she was sinking.

29th int. Whereabouts was the Katie, in reference to Diamond Island, at the time she was struck by the Des Moines?

A. At the upper end—near the upper end—very near opposite the head of the island.

30th int. Did this bar you speak of make out from the island?

A. Yes, sir; from the head of the island and from the main shore of the island all the way down.

31st int. How was the course of the river at that point?

A. Well, it was not very crooked; straight till you got to the island, then you make a bend in to the right down the shore around the bar, and then gradually bend all the way round from the head of the island.

32nd int. Where is the point of that bend; opposite, or ahead of the island, or below?

82 A. It is a little above the head of the island. It first begins there.

33rd int. Did the Des Moines make out across the river above or below the point of that bend?

A. Below.

34th int. How far below?

A. A quarter of a mile, I suppose.

35th int. Are you well acquainted with that part of the river?

A. Yes, sir.

36th int. How long had you been running on the Ohio as pilot at that time?

A. About 12 or 14 years.

37th int. Is the shore along about the place of the collision covered with timber or clear?

A. Clear; farms all along, just a few bunches of timber along in the bend.

38th int. Was there a bunch of timber near the point where the Des Moines went out from the Indiana shore?

A. Yes, sir; a bunch of timber above.

39th int. What position did the Des Moines occupy immediately after the collision?

A. She was square across the river immediately after, and at right angles when she struck us, and after she hit us she bounded back. I suppose she was as near square across the river as she could be.

40th int. About what speed was your boat running at that time?

A. I suppose 8 or 10 miles an hour; not under 8 or over 10, I don't think.

41st int. Do you know the speed the Des Moines was running?

A. I don't know; up the river, though, pretty lively.

83 42nd int. How far were you from the Des Moines at the time you heard her signals?

A. I suppose near half a mile.

43rd int. What answer was made by your boat to the signal of the Des Moines?

A. There were two whistles.

44th int. Did you hear them yourself?

A. Yes, sir.

45th int. What lights did your boat have at that time?

A. She had regular signal lights, blue and red.

46th int. Where suspended?

A. Under the hurricane deck.

47th int. You say a blue and red light?

A. Yes, sir.

48th int. How many chimneys to your boat?

A. Only one.

49th int. Whereabouts, in reference to the chimney, were the lights suspended?

A. Well, the chimney was aft, on the stern, and the signals were forward, on the hurricane roof.

50th int. How were these lights suspended? how high from the hurricane roof?

A. Right aft the hurricane roof; right forward on the stanchions that supported the hurricane roof.

51st int. How high would that make them from the lower deck of the boat?

A. I suppose it would be at least 23 or '4 feet, probably more than that.

52nd int. Did the boat have two decks?

A. Yes, sir; boiler and hurricane.

53rd int. Stern-wheel boat?

A. Yes, sir.

84 54th int. After the Des Moines changed her course, as you say, across the river, was there any way in which you could have got out of the way, either by backing or taking another course?

A. No, sir; it was done so quick that we had no time for to back out of the way; a little boat like her, it took some time to check her headway, going down with the current like that. If the Des Moines had backed on her larboard wheel, they could have kept from running into us, I think.

55th int. What would the effect be in backing that way?

A. Throw her headway from us in towards the left hand shore.

56th int. How long had you been at the wheel at the time this accident took place, that day?

A. I came on watch after supper about 15 or 16 mile below Evansville. I think about the head of Henderson Bend, below Henderson Island. I suppose I had been on watch a little over an hour, probably an hour and a quarter.

57th int. Were you drinking any that day?

A. No, sir; I took one drink aboard the Des Moines after I got aboard of her, on account of being wet and chilly. When the boat sank, the captain hallooed to me to come out, as she was going to turn over. I came out, and in attempting to jump off, missed the guard and fell into the river.

58th int. Did you change your clothes after you got off?

85 A. Yes, sir; and then went to the bar and got a drink of brandy.

59th int. That is all you drank that night?

A. Yes, sir; I drank a drink or so that day, along in the forepart of the day; that's about all I drank.

60th int. Had you drank anything after you left Evansville, before the accident?

A. No, sir.

61st int. State whether you considered yourself under the influence of liquor at that time?

A. No, sir; I was not. I don't think any man ever seen me that way at the wheel on the steamboat. I have been that way, but never on duty, and don't make a practice of that on steamboat; I have ashore, sometimes.

62nd int. Do you know who was pilot on the Des Moines at the time of the accident?

A. A man named Dunlop was said to be pilot.

63rd int. Are you acquainted with him?

A. Yes, sir.

64th int. Do you know what experience he has had as a pilot on the Ohio?

A. I have known him 16 or 17 years. It is the first I ever knew of his piloting till on that boat.

65th int. What was his business before that?

A. Mateing.

66th int. Mate on the Ohio River?

A. Yes, sir; mate on the Ohio River about 12 or 15 years.

67th int. What business had he been in immediately preceding that?

A. I don't know.

68th int. Do you know what he is doing now?

86 A. He is at home, sir. He has not been doing anything; he has not done any piloting, only on one boat, that is the "Pringle," since the collision.

70th int. Do you know what became of the Des Moines after the accident to the Katie?

A. I got on her and went to Evansville on her.

71st. int. Who piloted the Des Moines to Evansville?

A. This same man.

72nd int. Who piloted her after she left Evansville?

Ans. A man by the name of Ludi—William Ludy.

73d int. Who was master of the Des Moines at that time?

A. I don't know his name.

74th int. Was Mr. Conrad on the boat?

A. Conrad, I think that is the name. I think it was the clerk that had charge of her.

75th int. Was any application made to you to pilot the boat?

A. Yes, sir; to me or to my partner, to go to Louisville on her.

76th int. Where from?

A. From there.

77th int. On that trip?

A. Yes, sir. I told him I would get a man at Evansville.

78th int. Did you?

A. Yes, sir.

79th int. Who?

A. A man named Ludz.

80th int. Who made this application to you to pilot the boat?

A. I don't know who it was, whether the clerk, captain, or who.

81st int. In what capacity did he seem to be in?

A. I suppose he must have been captain of the boat at that time; I don't know

87 82nd int. After you saw the Des Moines for the first time that night, was she at any time out of your sight until the collision took place?

A. No, sir.

83rd int. What time in the night was it?

A. I suppose about 9 o'clock.

84th int. What kind of a night was it?

A. It was a pretty night; starlight night. I could see way up and down the river two miles & over, where the river was straight.

85th int. When you first saw the Des Moines, where was she—hugging the Indiana shore, or out next the island?

A. She was about the middle of the river, as near as I could guess, when I first saw her.

86th int. Then what course did she take after her signals were answered by you?

A. She kept going straight towards us.

87th int. Did she get, at any time, any nearer to the Indiana shore after the signals were sounded, than she was when you first saw her?

A. Well, she got a little, a very little; they *kinder* turned in towards the shore, and then, when she got up within about 300 yards, she turned towards us.

88th int. How close to the Indiana shore was she at the time she turned across the river?

A. I suppose 100 or 150 yards, somewhere; we *was* running, I suppose, about 250 or 300 yards from the shore.

89th int. Do you know the course of the channel down towards the foot of the island where it hugs the Indiana shore?

88 A. At the foot of the island you keep up pretty much in the middle of the island till you get up above the foot of the island, then you hug the Indiana shore, and then round close up to West Franklin, above the head of the island.

90th int. The channel in the front of the bend opposite the head of the island hugs the Indiana shore until it gets near the middle of the island, then it goes out in the middle of the river, and then what course?

A. It continues in the middle until you drop over to the tow-head, that is, below one foot of the island, then you straighten down the middle of the river from there.

91st int. Does it not get near the Indiana shore again after you pass near the foot of the island?

A. Well, it is a little nearer than the bend, if anything.

92nd int. Can you give us, on a piece of paper, anything near the position of the course of the river and the course of the channel, and the position of the island?

A. Yes, sir.

93 int. Who drew that up? (handing witness a paper.)

A. I did.

94th int. Does that contain a correct representation of the river and island at that point?

A. Yes, sir.

95th int. I will get you to name the island, and the boats, and the channel—to write them down.

(The witness complied with the request.)

96th int. This diagram represents the correct position of the boats, the river, and the shore.

A. Yes, sir.

89 (Diagram attached to this deposition and marked Exhibit "A.")

97th int. What became of the Katie after the collision?

A. She lay on the bar alongside Diamond Island.

98th int. How deep had she sank?

A. In about 15 feet of water.

99th int. How did it come on her deck?

A. It did not come over the hurricane roof, by right smart—up above the boiler deck a little.

100th int. Do you know the extent of the damage from the blow; what parts of the boat were broken?

A. I do not; all I know is she caved our head in—the right side, aft the capstan.

101st int. You don't know how big a hole it made?

A. No, sir.

102nd int. Do you know whether any of her timbers were broken?

A. No, sir.

103rd int. Did you remain in the wheel-house till she sunk?

A. Till she sunk down to the boiler deck; never went out until they came alongside and made fast to the boat.

Cross-examination, by the respondent:

1st x-int. You did not take the boat out of Evansville?

A. No, sir.

2nd x-int. Who did?

90 A. Mr. James Dam'on, my partner, pilot with me on the boat.

3rd x-int. How long did you say it was before the collision took place that you went on watch?

A. I suppose it was an hour or an hour and a half, probably an hour and a quarter; I don't know exactly.

4th x-int. Where had you been previously, after the boat started from Evansville?

A. Well, I was waiting for supper.

5th x-int. What part of the boat?

A. In the cabin.

6th x-int. When you first saw the Des Moines, how far did you say you were apart?

A. We struck immediately, I suppose.

7th x-int. Was that before or after she whistled?

A. Before.

8th x-int. How long did you see her before she whistled?

A. I can't tell exactly; I suppose ten or twelve minutes.

9th x-int. You saw her lights?

A. Yes, sir.

10th x-int. Where was she before she whistled, when you first saw her?

A. She was coming up the middle of the river.

11th x-int. What was her position then in reference to the island?

A. She was about as near the middle, coming up the river.

12th x-int. I mean how high up on the island?

A. She was about half way up the island.

13th x-int. Was she crossing then towards the Indiana shore, or did she pursue her course straight up the river.

91 A. She came pretty much straight until she got up; until she blowed her two whistles.

14th x-inst. Did you see her cross from the lower part of the island toward the Indiana shore?

A. She did not make any crossing till she was coming up the middle of the river; till she came up within a few hundred yards of us, and then kind of pulled up a little; came up within two or three hundred yards of us, and then came towards the bar.

15th x-int. Did not the bow of the Des Moines point, as she was coming up, towards the Indiana shore?

A. Well, very little; for if you run in the middle of the river your jackstaff would be on the bend shore.

16th x-int. What do you mean by the bend shore; the Indiana shore?

A. If you run in the middle of the river, running close to the island, your jackstaff would look on the Indiana shore.

17th x-int. If you run close in the island, which way would it?

A. Not close in, it would not, but *but* if you were running near the middle of the river, the way the river is shaped.

18th x-int. What I am trying to get at is this: Did not you see the boat as she was coming up—the Des Moines coming up; did you or did you not observe the Des Moines cross as she was coming up from the middle of the island, from the island, further toward the Indiana shore?

92 A. I seen her all the time; the lights.

19th x-int. Did you see her do that?

A. I seen her come up the middle of the river; she did not cross in; very little, if any.

20th x-int. Did she at any time, from the time you first saw her till the time she blowed her whistle, alter her course—her course in coming up the river?

A. A very little, sir.

21st x-int. Did she alter it at all?

A. Well, I don't know as she did.

22nd x-int. What was that course, then, from the time you first saw her until the time she blew the whistle?

A. She was coming straight up the middle of the river till she got within about 300 yards of us; then she turned like she was coming over to the island again.

23d x-int. Did I understand you to say, in your direct examination, that from the time she blew her signal till the time of the collision, that she kept coming straight towards you?

A. Yes, sir.

24th x-int. Then, from the time she blew her whistle, her course was continuous and direct; there was no alteration?

A. No, sir; I don't think there was.

25th x-int. How long was it from the time that she blew her whistle till the two boats came together?

A. That is mighty hard for a man to tell. I suppose it was five minutes.

26th x-int. In point of space how far were the boats apart, as
93 near as you can get at it, from the time she first blew her whistle?

A. I suppose quarter of a mile; probably further.

27th x-int. What is the usual course for ascending boats at that point from the foot of the island or towhead to where the collision occurred?

A. From the towhead to the middle of the river, till you get up within about 500 yards of the towhead, then you come to the Indiana shore, and the river run close round the head of the island to West Franklin.

28th x-int. The point of the Indiana shore at which you commenced to come in along the shore, what part of the island would that be opposite?

A. It would be about ⅓ of the island up.

29th x-int. Was it ⅓ from the head or the bottom?

A. From the foot, where you fall into the shore, then you run with the shore close around till you come to West Franklin.

30th x-int. How close to the Indiana shore was it usual for ascending boats to run?

A. Within 12 feet of the bank, if you want to; about 20 feet, I suppose.

31st x-int. How far out, at a high stage of water, to pursue what is a fair course?

A. They can run as near as they want to.

32nd x-int. About how far; that is, what latitude of distance would you give them?

A. Any sized boat ought to run 25 yards; the biggest class of
94 boats.

33d x-int. Suppose the water at the high stage, then how far, there being good water away out hundreds of yards?

A. Then if good water all the way out, they ought to run the island round. If there is plenty of water, so that they get over the bar, then they would run the island.

34th x int. You mean up the island shore?

A. Yes.

35th x-int. And suppose the water was what it was at that stage, was that a good stage?

A. Yes; a fair stage.

36th x-int. High?

A. It was not very high nor very low.

37th x int. Pretty high, was it not?

A. About half a bank full.

38th x-int. Well, at that stage, then, how far out from the Indiana shore might a boat run and be in her proper course?

A. If she had run 25 yards outside the Indiana shore she would be out of the channel, because the channel would be between her and the shore.

39th x-int. Then she could run properly any distance within 25 yards from the shore?

A. Yes, sir; that is, the lower part of the island you speak of?

40th x-int. No. My question now refers to what we were previously talking about; that is, the point where it is proper for a boat to cease running the middle of the river and commence running the In-
95 diana shore?

A. Well, that is correct.

41st x-int. You could see the Des Moines very plainly all the time?

A. Yes, sir.

42nd x-int. What had been your course; how had you been running a little before the collision, for a few minutes?

A. I had been down the middle of the river.

43rd x-int. All the time?

A. Yes, sir; the channel above where I entered into the chute, is right down the middle of the river.

44th x-int. How far was the good water from the point just above where the collision happened; say several hundred yards above; how far out from the Indiana shore for a descending boat was there good water at that stage?

A. Well, it is according to what the boat was drawing.

45th x-int. A boat of your size?

A. I could not venture out, I suppose, over 250 or 300 yards from the Indiana shore.

46th x-int. What was your boat drawing?

A. 3½ or 4 feet.

47th x-int. Heavily loaded?

A. Yes, sir.

48th x-int. Do you know what the Des Moines was drawing?

A. No, sir; I do not. She had nothing on her but soldiers. I don't think she had any freight.

49th x-int. Up to the moment of the collision did you state that
96 your boat was in the middle of the stream all the time?

A. Yes, sir; near the middle of the chute.

50th x-int. How far would that make her from the Indiana shore, just at the time or prior to the collision?

A. I suppose about 250 or 300 yards. The river is pretty wide right where the collision was.

51st x-int. How wide?

A. 600 yards, I suppose, from the Indiana shore—the head of the island; very nearly the same from there to the Kentucky shore.

52nd x-int. At the time of the collision was the bow of the Katie pointed straight down stream?

A. Yes, sir.

53rd x-int. In the middle of the river?

A. Yes, sir; near the middle.

54th x-int. And the other boat, I understand, the Des Moines, was at right angles with the river at the moment of collision?

A. Yes, sir; he blowed for the channel side, and I pulled round the bar as soon as I could to give him all the room he wanted.

55th x-int. You speak of this change, as you call it, in the Des Moines, and that if she had backed on her larboard wheel that it would have kept her bow running towards the Indiana shore?

A. Yes.

56th x-int. Now what was that change that would have been prevented? Just describe it.

A. In the first place we were straight in the river; if she had backed on her larboard wheel it would have throwed her bow towards the left-hand shore instead of making her bow where our bow was.

7 57th x-int. Where was that?

A It was right angles; backed on her larboard wheel it would have throwed her bow into the Indiana shore, and she would have missed us.

58th x-int. As I understand you, previous to this change the Des Moines was going on up the river; then she made this change and came towards you in this way, and that placed her right angles with the river.

A. Yes.

59th x-int. Now in order to make this sudden change, slew, or whatever you call it, about how must that boat have gone on her wheels?

A. Well if she had stopped her larboard wheel, and began to back, that would throw her away from us.

60th x-int. In order to produce this sudden change, what must have been the management of the Des Moines; that is, from your familiarity—you knowing the way in which boats are managed in order to produce this position at right angles from the contrary position in which she previously was—what must have been the management of her wheel?

A. I suppose three or four revolutions back on her larboard wheel would have pulled her back, and she would have missed us.

61st x-int. You say she came round at right angles; now in order to get at right angles how must she have gone on her wheels to
98 have brought her round at right angles; must she have gone ahead on her larboard, or backed on her starboard?

A. No, sir; she was going ahead on both wheels when she struck.

62nd x-int. Well then, going ahead on both wheels equally, would produce this sudden position at right angles—bringing her at right angles across the river.

A. I suppose it was because he didn'nt know how to steer the boat. I don't know anything else.

63d x-int. I understood you to say this change was sudden, and that she had been previously going the other way; then she comes around and places herself in a position that makes her at right angles with the river?

A. Yes; she was coming straight up the middle of the river till she turned at right angles towards us.

64th x-int. I wish you to state now, at the moment of collision, as the boats came in contact, the position of the Katie in the river, and the position of the Des Moines?

A. Well, sir; at the moment of the collision we were mighty near straight in the river; about as near straight as you could get a boat, I reckon.

65th x int. In the middle.

A. Nearly so; nearly 300 yards from the Indiana shore, out to the bar.

66th x-int. And the Des Moines?

A. The Des Moines kept going up the river.

99 67th x-int. I am referring now to the moment of the collision.

A. It was very near square across the current.

68th x-int. How near was she, or the nearest part of her to the Indiana shore; how near was her stern?

A. I s'pose, I can't tell exactly, 150 yards or 100. I know after she struck she was in right angles, and her head went down stream; and, if any thing, she lay with her stern right up stream after she struck.

69th x-int. Immediately after?

A. Yes, sir.

70th x-int. Do you know she was going, (the actual motion on her at the time she struck,) whether a backward or a forward motion?

A. She was going ahead, sir.

71st x-int. Certain of that?

A. I never heard any bells rung on her till we struck; then I heard the backing bells rung.

72nd x-int. Are you certain she was coming ahead at the time of the collision?

A. Yes, sir.

73rd x-int. You are willing to swear to it?

A. I believe I am.

74th x-int. You are certain she had no backward impetus?

A. No, sir; she was not backed any till she struck.

75th x-int. Did you say that her wheels were not going back at the time she struck?

A. No, sir; they were not.

100 76th x-int. Do you mean to say that the signal had not been given her to back at the time she struck?

A. Well, I can't say that at all.

77th x-int. But you are certain her wheels were not backing.

A. Yes, sir; I never heard any bells until after she struck, then I heard them.

78th x-int. You heard the backing bells after she struck?

A. I heard bells and supposed them to be backing bells, of course, because a man wouldn't ring to go ahead.

79th x-int. What were the signals given aboard your boat, of any kind, from the time of the answering of the whistles up to the time of the actual collision?

A. The whistles blowed to keep to the larboard.

80th x-int. And from that time?

A. Well, I rung the bell to stop her.

81st x-int. When?

A. Before she struck us.

82nd x-int. How long?

A. I suppose probably a minute or two minutes; I don't know exactly.

83rd x-int. Are you positive it was as long as a minute before you gave the signal?

A. I think so.

84th x-int. Was the engine actually stopped at the moment of collision?

A. I think so. The engineer was at his post, and I did not hear the escape any more after the ringing of the bell.

85th x-int. Are you certain the engine was actually *stopt*?

A. Yes, sir; I think it was.

86th x-int. How long before the collision, in your judgment, was the engine actually *stopt*?

101 A. Well, I just about had time to stop the engine, and ring the gong to back her.

87th x-int. Was the gong rung to back her before the collision?

A. Yes, sir; just at the time of the collision, just about a minute before.

88th x-int. Are you certain it was a minute, or anything like that?

A. Well, I think it was near a minute, may be more; I don't know.

89th x-int. Then you think that the engine was not only actually *stopt*, but that the signal had been given to back her (the Katie) a minute before the collision?

A. Yes, sir.

90th x-int. Had that been executed?

A. I think it had.

91st x-int. And the engine reversed before the collision?

A. Yes, sir; I think it had.

92nd x-int. If that had been done a minute before the collision, was the speed of your boat decreased at the time of the collision?

A. No, sir.

93rd x-int. If it had been done full a minute before?

A. No, sir; a little boat like that can't check up quick.

94th x-int. I do not ask whether the whole impetus of the boat was checked, but whether some of the force was not checked, so that she would have been going at a less rate of speed than previously?

A. Yes, sir, of course; if we stopped her, her headway would be decreased.

102 95th x-int. Those signal lights on your boat were hanging below the hurricane roof, were they not?

A. Yes; right under.

96th x-int. Attached to a nail driven into the hurricane roof?

A. Either to a nail or hook, I don't recollect which, right by the stanchions.

97th x-int. How far beneath the noseing of the hurricane roof?

A. Right straight up from the railing.

98th x-int. How far would the light, not the mere lantern, be below the noseing of the hurricane roof?

A. Well, I suppose—from the noseing to the light—I do not expect it is more than about six inches or a foot—the space between it from the top of the lantern to the roof.

99th x-int. If these lights were suspended so as to hang in that position from the pilot-house, you could not see them, could you?

A. No, sir.

100th x-int. You don't know then, at the moment of the collision, any lights were hanging there?

A. I know they were put there when I went on watch.

101st x-int. But at the moment of the collision, do you know whether any lights were hanging there?

A. They were there when I went on watch. I know that.

102nd x-int. But at the moment of the collision, were there any signal lights in that place.

A. To the best of my belief, I believe there were.

103 103rd x-int. I repeat the question, whether you know at the moment of collision that there were any signal lights on that boat?

A. I know they were there when I went on watch. I know nothing after that, till somebody reported after the collision that they had cut them down and taken them aboard the Des Moines.

104th x-int. Do you know whether at the moment of the collision the signal lights were up on that boat?

A. Well, I can't say that, because I was above, you know, in the wheel-house.

105th x-int. In a position where you could not see the signal lights?

A. Yes, sir.

106th x-int. How long were you in that position prior to the collision?

A. I think an hour, or an hour and a quarter.

107th x-int. Then you had not seen the signals for an hour and a quarter before the collision?

A. No, sir. I *seen* them when I went on watch, hanging there.

108th x-int. What was there about these signals—hang ng around

them, that is, near them—was there any thing immediately back of them, or around them.

A. No, sir.

109th x-int. Didn't they hang up against a canvass concern, in a canvass or piece of stuff made of canvass, extending down from the nosing of the hurricane roof, or near there to the boiler deck?

104 A. They were not when I went on watch.

110th x-int. Anything near them?

A. Not when I *seen* them.

111th x-int. What kind of lights were they?

A. Red and blue lights—or green—whatever you might call it.

112th x-int. An ordinary lantern?

A. No, sir; the glass was colored.

113th x-int. Was it a colored lantern?

A. Yes, sir.

114th x-int. What sized lantern?

A. Pretty good size; about the ordinary size that boats have. They are all about the same size, I reckon.

115th x-int. Did you notice that the crane on the chimney was broken at the time, so that the lights had not been for some time hung on the chimney?

A. Yes, sir.

116th x-int. After that was broken, then the lights used to be placed in this position near the nosing of the hurricane roof?

A. Yes, sir.

117th x-int. You have described the position of the boats just now, at the moment of the collision. I wish you to describe how they lay after the collision, as the boats parted.

A. Well, she, (the Des Moines,) was as near square across the river after she struck.

118th x-int. With her bow pointing how?

A. Towards the island; right angles, and stern towards the Indiana shore?

119th x-int. How far out in the river?

A. I suppose it was 150 or 200 yards, probably.

105 120th x-int. And your boat—how was that?

A. After she struck, or when she struck us, I suppose she was 250 yards out; then she bounced back like, and we was about in the middle of the river.

121st x-int. Then you remained in about the same position immediately after the collison, as you were prior to the collision?

A. Yes, sir.

122nd x-int. What did you say your rate of speed was?

A. I suppose from 8 to 10 miles an hour.

123rd x-int. Was it not nearly 12 with that current?

A. I don't think it was, the way we were loaded. We were loaded down pretty heavy, and ten mile an hour is pretty good running for a little boat like her.

124th x-int. When the boats came together, how long do you suppose they remained in contact?

A. After they struck?

125th x-int. No. In coming together, how long did they keep together before they parted?

Well, that is after they struck, of course.

126th x-int. But not after they parted.

A. They did not keep together any time; just went apart in an instant.

127th x-int. It was instantaneous?

A. Yes, sir; a man wouldn't have had time to have got aboard of them before they separated.

128th x-int. Was there any one on the hurricane roof at any time prior to the collision—on the Katie?

A. Yes, sir; the mate.

106 129th x-int. Where was the mate?

A. He was on watch in the wheel-house about 5 minutes before the collision.

130th x-int. What was he doing there?

A. Standing talking to me, and he *goes* out on the hurricane roof before we came in contact.

131st x-int. Did you see him on the hurricane roof just before the collision?

A. Yes, sir.

132nd x-int. Then you say that at the time of the collision, or just prior to it, it was the mate's watch?

A. Yes, sir. The captain and mate were both up, but it was the mate's watch.

133rd x-int. You are certain of that?

A. Yes, sir.

134th x-int. How long before the collision had you seen him on the roof?

A. He was standing on the wheel-house talking to me, when we first came in sight of this boat.

135th x-int. Then what became of him?

A. Went on the roof.

136th x-int. Did he remain there?

A. Yes, sir.

137th x-int. Did you see him there?

A. I did.

138th x-int. Up to the time of the collision?

A. Yes, sir.

139th x-int. Where was the captain?

A. In the cabin, I suppose.

140th x-int. It was not the captain's watch?

A. No, sir.

141st x-int. How far do you place the actual spot of collision from the Indiana shore—the point where the two boats came together?

A. I suppose, 150 or 200 yards; may be over that; I don't know

107 exactly.

142nd x-int. Q. How big, about, was the Des Moines relative to the Katie?

A. Right smart larger boat than the Katie. I suppose, about a 600 or 800-ton boat. The Katie was 150 or 200.

143rd x-int. Q. The Katie was built differently from other boats?

A. Yes, sir; a one-chimney boat.

144th x-int. Was the chimney of usual size for a boat of that size?

A. Yes, sir.

145th x-int. The only difference consisted in there being one instead of two?

A. Only one, sir.

146th x-int. How was the top of her chimney up from the hurricane roof?

A. Well, I suppose about 24 feet; somewhere there—may be more.

147th x-int. How high do boats of that size usually have them?

A. Some *has* them that high, and some a great deal more than that.

148th x-int. Her chimney might have been 30 or 35 feet above the hurricane roof?

A. It may have been, for what I know. I don't know exactly the distance—the length of the chimney.

149th x-int. What should you judge?

A. I should judge about 24 feet.

150th x-int. You don't think that just before the collision the bow of the Katie was turned further away?

A. No, sir; she was straight in the river—round the bar.

151st x-int. As you came into the Des Moines, just prior to the
108 boats coming together, did you notice the fire-doors of the Des Moines?

A. Yes, sir.

152nd x-int. Were they open?

A. Well, I suppose some of them were open. I saw a great light coming from them. That was just before the collision.

153rd x-int. Did you let go the wheel at any time of that boat, till she struck?

A. No, sir; had my hands on the wheel all the time.

154th x-int. Was there any one else in the wheel-house at any time, after the mate went down?

A. No, sir.

155th x-int. When the Des Moines took you in tow, how far did she tow you?

A. She towed us about, I suppose, 200 or 300 yards, till we struck the bottom.

156th x-int. In what direction?

A. Quartering down the river.

157th x-int. Much quartering?

A. Yes, sir.

158th x-int. Why didn't she take you direct to the nearest shore?

A. Well, when she got away from us, she was away below us—we floating down and sinking all the time. After we got a good piece below where she first struck us, then she came alongside, and towed us in below Priest's Landing.

159th x-int. Did she take you to the nearest available point?

A. Yes. We were going ahead on the Katie all the time, trying to drift her into the island, and signalled to have her, (the Des
109 Moines,) come in.

160th x-int. She came immediately?

A. After the signal struck twice, we signalled once, and the passengers were all on the roof and saw her sinking, and they insisted that we should blow again. The captain told me to blow again, and I did so. She came alongside and made fast, and towed us in till we hit the bar, before we made this island, in about 15 feet of water.

161st x-int. How far was that from the island shore.

A. I suppose 50 or 60 yards; probably more.

162nd x-int. Did you give your evidence in this case before the inspectors, at Louisville?

A. Yes, sir.

163rd x-int. Do you recollect what you stated there?

A. Well, I don't know whether I do or not.

164th x-int. Whatever you stated there is correct, is it not?

A. I think it is about as near as I can get at it.

165th x-int. If there are any points in your statement before the inspectors, in which your testimony differs from the testimony you have

given here, is the testimony before the inspectors, being fresher and more recent, more likely to be correct?

A. Well, I think the one is about as correct as the other. I don't think I told anything only what just happened in the case, as far as I know.

166th x-int. How long ago was it you gave your testimony before the inspectors?

110 A. Well, that has been near two years.

167th x-int. Your recollection was fresher then than now, or is it just as good?

A. Well, I think I can recollect about as much about it now, as I could then—mighty near it.

167th x-int. Do you wish to be understood now, as stating or as not stating that the Des Moines, when she was coming up, turned in toward the Indiana shore, and come up along the Indiana shore?

A. She was near the middle of the river when I first *seen* her; she might have varied a little toward the Indiana shore, but not much, if any.

169th x-int. Do you recollect making this statement, or any statement to this effect, in your testimony before the inspectors at Louisville? "Some little time before the boats approached to about 300 yards, (in which the witness before placed them,) the Des Moines seemed to run in toward the Indiana shore, which was also the left, as indicated by her signals."

A. I guess I did, sir.

170th x-int. Then do you think it correct, and do you now state that, after she blew her whistles, she did turn in towards the Indiana shore, and kept for a time up the Indiana shore?

A. She turned in a little, very little, and kept that way till she got within 300 yards or so, and then she turned out again, as if going towards the head of the island or bar.

111 171st x-int. How far would you say she was from the Indiana shore, while she was running up the Indiana shore in the manner you have spoken of?

A. Well, I suppose she was about 150 or 200 yards—probably more; I can't tell exactly. We were about the middle of the river.

172d x-int. If the Des Moines was in the middle of the river as she was coming up, how far would that place her from the Indiana shore?

A. About 300 yards.

173rd x-int. Then do you state, or do you not state, that she was turned in toward the Indiana shore?

A. She varied in that way a little, because she came up within about 300 yards of us, and then she came out again.

174th x-int. Do you remember what you stated in your testimony before the inspectors, on the subject of the engines of your boat being stopped, or not stopped?

A. I think they were stopped, sir.

175th x-int. Do you remember making this statement? "I immediately rang the bell to stop the engines. I supposed they were stopped, as I had rung the gong to ship up, and back the boat, but in almost the same moment of time I rang the bell to stop and to back, the boats came together.'

A. Yes, sir; I think that is what I said.

176th x-int. How do you know that this pilot, who was on the

112 Des Moines at the time of collision, has piloted only one boat since the collision?

A. Well, sir, I live within about 4 mile' of him, and I never heard of

his being on any other boat since that. I know he has been mate on the st'mb't Cumberland.

177th x-int. Then you state he has been pilot only on one boat since that time; you state that, merely because you have heard of only one boat on which he has been pilot?

A. I have never seen him, only on one, as pilot, and that was shortly after the collision.

178th x-int. Then you know nothing about him?

A. He may be, for what I know. I know only from what I heard him say. I *seen* him at home the time previous to the time he was mate on the Cumberland.

179th x int. Don't you know he got a license as pilot shortly after this, and was a regularly-licensed pilot?

A. No, sir; he never was a pilot.

180th x-int. You don't know it?

A. I do know he never was.

181st x-int. How do you know?

A. I know, because he has not had experience; never worked any time at it at all.

182d x-int. Do you swear he never was a licensed pilot after the collision?

A. No, sir; he might have got a license after that.

183d x-int. Can you say that, a short time after the collision,
113 he was not regularly licensed as a pilot on the Ohio River?

A. No, sir; I can not. He may have got it after that—I don't know.

184th x-int. Hadn't you been drinking just before that boat left Evansville?

A. No, sir. I had taken two drinks, I think, that day.

185th x-int. Any more?

A. No more till I got aboard the Des Moines, then I took a pretty good horn, being cold and chilly.

186th x-int. But before the collision, had not you drank that day more than two drinks?

A. No, sir.

187th x-int. Are you certain?

A. I am.

188th x-int. When were those drunk?

A. Along about the middle of that day.

189th x-int. Immediately before the boat's, or shortly after the boat's leaving Evansville, had not some of the officers been drinking together?

A. No, sir. There was not a man drunk aboard the boat; if there was, I didn't know it.

190th x-int. Were none of them under the influence of liquor?

A. I don't think they were, sir. That is a thing I never *seen* while I was on the boat—any of the crew that way.

191st x-int. Had you drank nothing between the time you left Evansville, and the time you went on watch?

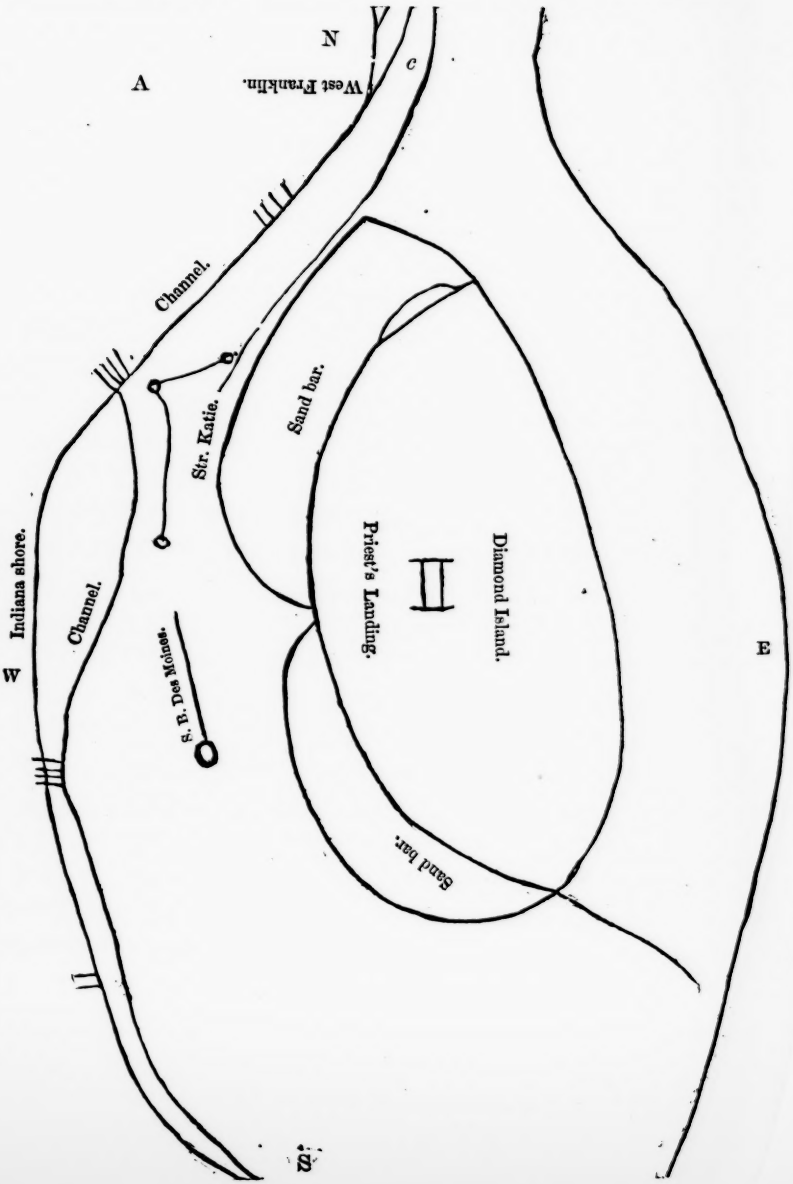
A. Nothing at all more than water.

192nd x-int. What was that difficulty—that row that occurred bebetween some of the officers of the boat, a little while before leaving Evansville?

114 A. That is something I don't know any thing about. I was up town when it happened. It was between the mate and the watchman. They fell out; the watchman was paid off, and another watchman hired. I don't think he went that trip with us. I was up town at

the time. I seen the watchman up town, after the fuss, and he told me he was going home.

(Signed) GUSTAVUS MELLON.



115 *William Merriman.*

The deposition of William Merriman, on behalf of the libellants, taken before Butler C. Christy, notary public in and for the city of Pittsburg, Allegheny County, Pennsylvania, at the said city of Pittsburg, on the 27th day of August, A. D. 1866.

W'm Merriman, engineer, deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

I reside in Allegheny City. My business is an engineer. Have been engaged in that business 7 years. Am licensed as an engineer. I was second engineer on the steamer Katie in the month of November, 1864. Was aboard as 2nd engineer on the 22d of November, 1864. She was properly manned at that time, having all the crew the law required. All on board who required it were licensed, viz: two pilots & two engineers. She had a full crew. Said boat was going Evansville to Nashville at that time. On the 22d of November, 1864, between the hours of 9 & 10 o'clock at night, a collision occurred at Diamond Island, between said Katie and the steamer Des Moines. I was on watch in the engine-room. Captain McConnell was on the upper deck and Gus. Mellon was pilot on watch. The "Des Moines" was coming up the river and the "Katie" was going down. There *was* two distinct whistles blown on our boat, between 4 and 5 minutes before the collision. About a minute before the Des Moines struck us, our pilot stopped the
116 engine and shipped up for backing, and just as we got shipped up the "Des Moines" struck us. I looked out of the engine-room after she had struck us and saw the "Des Moines" lying square across the river. The "Des Moines" *the* backed out in the river and the captain called on them and told them that we were sinking. She, (the "Des Moines,") came up alongside and towed us as near as she could to shore. We all (except a man or two) got aboard of the Des Moines & came up to Evansville. The "Katie" was sunk to the hurricane roof. When the "Des Moines" towed us to the shore I missed one of my firemen, and know he was lost. Everything on board was lost, so far as I know. The collision occurred at the head of Diamond Island, in what is called the Indiana Chute, between 300 and 400 yards from the Indiana shore. At the time of the collision the "Katie" was lying with the current, (she was stopped,) and the Des Moines was lying square across the river, on the right hand of the Katie, toward the Indiana shore. The boats were lying at right angles when I saw *the*. The Des Moines struck the Katie when her engines were stopped. Cannot say at what rate of speed the "Des Moines" was running. She was a boat that could run at the rate of about 8 miles an hour up stream. The boats struck with so much force that I was knocked down. The "Des Moines" struck the "Katie" on the starboard bow, immediately forward of the
117 stairs. Just forward of *the stairs* these stairs there was a hole in the Katie that you could have rowed a skiff in as far as the capstan. This hole was made by the Des Moines, causing the water to flow in so rapidly that the Katie sank to the hurricane roof in about 10 minutes. At the time of the collision the Katie was right at the head of Diamond Island. Do not know what distance from it. After the collision the "Des Moines" immediately backed out toward the Indiana shore, about 100 yards, and lay there until the water was up in the engine-room of the "Katie." The Katie had listed over to one side, and blew her whistle for relief, because she could not handle herself, as her wheel was so far under water that she could not turn in; and owing

to the shock caused by the collision she had separated one of her steam pipes from her starboard engine. That rendered her unmanageable after the collision. She was in a sinking condition from the time of the collision until she finally sunk. It was about 5 minutes from the time the first whistle blowed for relief before the "Des Moines" came up to the relief of the "Katie." When she came up she did not save anything from the wreck. When I first saw the "Des Moines" she was lying at right angles with the "Katie." I did not see her before the collision at all. The "Katie had blown her whistle twice before the col-
118 lision, and the collision occurred about 4 or 5 minutes afterwards. These whistles were one signal, and meaning for the Katie to take the left hand of the other boat. There was two signal lights on the Katie—a red one and a blue one. They were in their proper place on the chimney, and were there on the chimneys until the boat sunk. This was a clear night and the lights could be seen 2 miles. At this point they could *by* seen by the ascending boat at least three quarters of a mile. There was plenty of room for the "Des Moines" to have passed between the Katie and the Indiana shore at any point. There was a good stage of water—as good as need be—about 10 feet. The "Des Moines" could have passed up within 10 feet of the Indiana shore in safety. Did not hear any signals given by the "Des Moines," and do not know whether any were given or not. At the time the signals were given by the Katie I was standing at the throttle, between the two steam pipes, talking to the carpenter. This was my proper position. After the Katie sunk we all got aboard of the Des Moines and went to Evansville.

Cross-examined by J. H. Rankin, proctor for respondents:

I reside in Allegheny City, and have resided there about 20 years, and have resided there since this collision. I was on watch on the night of the 22d of November, 1864, from the time we left Evansville. We had not made any landings from the time we left Evansville. I never
119 was a pilot. I cannot say that I was acquainted with the channel at this place. The Indiana bank is steep and the water is deep close to the shore all the way around. The bank comes around in a bend, the bend lying towards the Indiana shore. From my position at my post I could not see the shores of the river without going to the door. The door was about 10 or 15 feet from my proper place as engineer. When the first signal was given by the Katie I was standing at the throttle. It was cold, and I stood by the throttle nearly all the time. I had not been out of the engine-room from the time we left Evansville until the time of the collision. Am positive I was not out of the engine-room from the time we left Evansville until the collision. I had not been at the door, to the best of my recollection, from the time we left Evansville until the collision. Prior to and at the time of the collision I had no knowledge of the position of the Katie relative to the Indiana shore. I mean prior to the collision. At the time of the collision I knew the position of the boat; she was about between 300 and 400 yards from the Indiana shore. The engines on the Katie were on the stern. She was a stern-wheel boat. The fire doors were from 10 to 15 feet after the middle hatch. The boilers & machinery were after the middle hatch. There were two signal lights out—a red and a blue light. The chimney was about 25 feet high. The lights were about two feet from the
120 top of the chimneys. The night was very cold. I was the engineer on watch. Gus. Mellon was the pilot on watch. Capt. McConnell was the captain on watch. He was on the roof, and came down to me after

the collision. Cannot say whether he was on the roof at the time of the collision or not. The above were the officers on watch at time of collision. The first engineer, David Moore, was in bed. Cannot tell length or width of boat, and know nothing about her capacity. Was knocked down immediately by the concussion, and fell toward the starboard side of our boat. Did not lay there long. After I got up I immediately stopped the doctor and put the fire out, as the concussion had knocked the tile from between the fire-bed and boiler, and the flames were coming up through. The next thing I done was to assist two or three ladies off the boat. I had not been away from my post from the time the signal was given until I was knocked down; then I arose and stopped the doctor, and then went to putting out the fires, as I have stated. I had discovered the position of the Des Moines before I commenced to put out the fire. Did not discover it before I was knocked down. It was about 3 or 4 minutes after the collision before the captain down to the head of the stairs above me. At this time they were getting the life-boat ready. It was about a minute before the collision occurred when I received the
121 signal to back the engines. The engines were stopped. The engines had been stopped 2 or 3 minutes before the boats came together. Did not back our engines at all, as they were unmanageable after the collision. The pilot rung one or two bells to back our boat after the collision, and I answered him up through the trumpet that the steam-pipe was parted and that the boat was unmanageable. Did not back our boat before the collision at all. Did not receive any signal to back before the collision. The "Katie" had been running at the rate of about 12 miles an hour; but just before the collision the engines were stopped and I do not know at what rate of speed she was going. When I received the signal to stop the engines she was running at the rate of 10 or 12 miles per hour, she was running under a full head of steam.

X. When you say that the Des Moines ran into the "Katie" when she was stopped, what do you mean: that the engines were stopped or that the body of the boat was stopped?

Ans. I mean that the engines were stopped. I know nothing about the boat—how far she ran after that. The breach in the "Katie" was right square in. When I was at the throttle, I was about 75 feet from where the Des Moines broke our hull. The boilers of the Katie were between me and the place where the Des Moines struck.

X-question. How did you see the position of these vessels, and
122 how far they were from the shore, with reference to the channel when you state that you were at the throttle all the time, prior to and up to the time of the collision?

Ans. Never looked out of the door before the collision; saw their position after the collision. I had no interest in this boat. David Moore, my partner, was asleep; he was in bed at least. I saw him about half an hour after we left port at Evansville; I know from my own knowledge that he went up stairs to go to bed. He was not drunk; he was as sober as I am now. It was about 3 or 4 minutes after the collision when I saw him again, and he was then sober. I cannot say whether he did or did not fall into the river; I next saw him on the Des Moines; do not know how he got on there; did not see him get on. He was standing on the forecastle; he went to bed that night back in the ladies' cabin. I did not go to bed at all; I saw him in bed in the ladies' cabin. The first place I saw the pilot, Gus. Mellon, was on the Des Moines, talking to the clerk; did not see him get on the Des Moines, and do not know whether his clothes were wet or dry.

Direct examination resumed:

I could see the Des Moines at the time of the collision, from the ... that the "Katie" not boarded up, as there was nothing but stanchions around. The captain's place is all over a boat, as much down in the engine-room as any place else.

123

(Signed) W'M MERRIMAN.

W'm Wolfendale.

The deposition of William Wolfendale on behalf of the libellants, taken before Butler C. Christy, notary public in and for the city of Pittsburg, Allegheny County, Pennsylvania, at the said city of Pittsburg, on the 27th day of August, A. D. 1866.

WILLIAM WOLFENDALE deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

I reside in the first ward, Allegheny City, and my business formerly was mate on the river; I have been on the river since 1842, in different capacities; about ⅔ds of this time I have been on the river; I was mate on the steamer Katie, a little over 3 months; I went on her about 29 of August, 1864, and continued on her until she sunk at Diamond Island, on Tuesday evening; think about the 24th of November, 1864; am not certain as to the date. We left Evansville for Nashville in the evening of the day she sunk, between 7 and 8 o'clock; went down the river apparently all right, until we came just above the head of Diamond Island; there we saw a steamboat. She blowed two whistles for the larboard side. We answerd her by giving two separate and distinct whistles; after she had blowed her whistle, the pilot he remarked: "Where is that boat going now? She is going over a bar that gets dry at 10 feet of water."

124

(Statement of the pilot objected to by respondent's counsel as incompetent.)

I was sitting on the pilot-house on a bench behind him, and got up and looked over the wheel and saw the boat coming from the Indiana shore toward us. We were in the middle of the river at the time. The pilot he remarked: "She is going to go on the other side of us."

(Statement of pilot objected to by respondent's counsel as incompetent.)

The pilot then stopped the engines. I went out of the pilot-house, and before I could get forward to the front of the deck she had run into us; then I started to go below to see about the cattle, and found the front steps knocked around and broke, so that they were not safe to go down; then I went back and went down the fender; when I got down, she had sunk so far that I could not do anything. I then went upon the hurricane roof again; I staid on the hurricane roof until the Des Moines came alongside of our boat. The Des Moines was about ½ or ¾ of a mile from the Katie when she gave the signal. The signal was answered right away by the Katie just as prompt as it could be answered. The course of Des Moines, according to the signal, should have been up the Indiana shore, and the course of the Katie on the Kentucky side of the Des Moines where she was going. If the Des Moines had not struck us we would have struck the island in trying to get out of her way. The pilot of the Katie drew the wheel to the larboard to get out of the way. Just as I was leaving the pilot-house I saw him giving her the wheel hard to the island. As soon as the Des Moines gave the signal to the Katie, she apparently left the Indiana

125

) and came out towards us; after the Des Moines struck us the Katie shored nearly a mile; she settled then about 200 yards from the island floating, and about ½ or ¾ of a mile from the Indiana shore. The Katie was nearly straight with the current; she might have been a little flanking in her efforts to get out of the way of the Des Moines. The Des Moines appeared to be quartering in the river with her stern towards the Indiana shore. The boats were at right angles. The engines of the Katie were stopped at the time of the collision, but the boat was in motion, as the weight of the current was carrying her at the rate of 4 or 5 miles an hour. Do not know the speed of the Des Moines at the time of the collision, but the concussion was very great. The breach the Des Moines made in the Katie was very large. The Des Moines struck us in what is called the starboard side chalk, cutting in to the capstan. It made a breach of about 8 feet long and 4 feet deep. The Katie then sunk; after the Des Moines struck us she backed out from us

126 and went to the Indiana shore. We were sinking. After we had floated down to where the wreck now lays, the Des Moines came alongside of us and took what little freight she could get and the people on board. At the time she struck us we were ¾ of a mile from the Indiana shore, as near as I can judge. She had that much room to pass us. We signalled the Des Moines to come alongside of us as we were sinking. We had floated near a mile before the Des Moines came alongside to our relief; we had signal lights on the Katie; they were both burning. I saw them put up. They were put up just before we left Evansville, and were still burning after the boat sunk, when they were taken down by the mate of the Des Moines himself; they were on the forward part of the boat. She had but one chimney, and one of irons on the chimney for hanging the lamp on, had got broke' off, and they were hanging where we formerly used to carry them on the front part of the boat. They could have been seen by an ascending boat at that point ½ or ¾ of a mile. The night was cold and clear. When I first went on to the Des Moines I went into the cabin. There were so many soldiers there I went up into the pilot-house, where I remained until I got to Evansville. There was only one pilot on the Des Moines.

Question. State whether you observed anything showing, or

127 tending to show want of competent skill on the part of that pilot from the time you went on board of the Des Moines until you reached Evansville. If so, what is it?

(Objected to as incompetent, irrelevant, leading, and because the witness has not shown that he is competent to judge of the workmanship, skill, or ability of the pilot.)

Answer. A short distance below Evansville, in the bend there was a tow-boat coming down with a tow of barges, and he rung the stopping bell of the larboard engine. The captain told him to ring the other stopping bell, and the captain took hold of the wheel, and pulled her back the opposite way from the way he was pulling her. I saw this myself.

Question. If the Des Moines had continued in the course the pilot was steering her, when the captain interfered, what would have been the result?

(Objected to by respondent. Same objection as above.)

Answer. My opinion is that he would have sunk those barges, or some of them. The collision with the Katie was a little after 9 o'clock at night, and this was between 3 and 4 in the morning. There was a full, competent crew on the Katie, consisting of two pilots, two engineers, mate, and watchman, carpenter, captain, and two clerks, with a full cabin

crew, and sufficient crew of deck-hands. Augustus Mellon was the pilot in charge at the time of the collision.

128 Question. What kind of a pilot was he?

(Objected to by respondents as incompetent, and because the witness has not shown that he is competent to judge of the capacity of a pilot.)

Answer. In my opinion, he is a good one.

Question. What is his reputation as such?

(Objected to by respondent's counsel as incompetent and irrelevant.)

Answer. His reputation as a pilot is good. I do not know how long he has been piloting. Mr. Mellon was at the wheel when the collision occurred. W'm Merriman was on watch as engineer, and it was the captain's watch.

Cross-examined by J. H. Rankin, proctor for respondent:

I am not a pilot; I never piloted vessels. I have steered them. Can't say how much I have steered them. The channel was all over the river at that place at that stage of the water. The river, I suppose, is a mile and a half wide at the head of Diamond Island. The collision occurred abreast of the head of the island. There was about 18 feet of water in the river at that time as indicated by the marks at Evansville. The width of the river from the head of Diamond Island to the Indiana shore is about $\frac{3}{4}$ of a mile; the width of channel is $\frac{3}{4}$ of a mile between the island and the main shore. I saw the Des Moines when she gave

129 the signal. I suppose we were about $\frac{1}{2}$ mile apart. I judge from the time she gave the signal until we came together. I remained in the pilot-house but a short time after we had answered the signal. The collision occurred after I came out of the pilot-house, and stepped forward five or six steps. I had gone about 20 feet. The Des Moines was in view all the time from the time she blew her whistle until she struck us, and the Katie was visible to her.

X-question. How do you know that the Katie was visible to the Des Moines all the time after she blew her whistle?

Answer. From the fact that she had seen us previous to that at a further distance.

X-question. How far were the two vessels apart when you observed the pilot of the Katie giving her the wheel hard for the island shore?

Answer. I should judge about 300 yards. If my memory serves me right, the engines were stopped at this time; when they were 300 yards apart, the engines were stopped.

Question. When he was giving the wheel hard down for the island shore, as you have stated, what was the position of the Des Moines?

Answer. She was still coming towards the Katie. There was no person on the hurricane roof with me. The master of vessel was down below, some place. I can say where he was. He had been master

130 from the time she came out for about 4 months. The Katie was going at rate of about 5 miles per hour when the collision occurred. Did not start down from the pilot-house until I saw a collision could not be avoided.

Question. You have stated, in your examination, that the Katie was trying to get out of the way. Now, what did she do to get out of the way?

Answer. He pulled the wheel down as I told you to run her towards the island shore. This was all I saw him do to avoid a collision. He was turning her as fast as he could when she struck him. There were two signal lamps on board, a red and a blue one. They were hanging

on the forward part of the boat outside of the boiler deck screen. They were hangiing from a hook that we had put there, and about 8 feet above the boiler deck, under the hurricane deck. The collision occurred, as near as I can judge, ¾ of a mile from the Indiana shore. When the signal was answered by the Katie, she was nearly a mile from the Indiana shore. I believe there are 1760 yards in a mile. After the Katie answered the signal, she did run nearer the Indiana shore than ¾ of a mile, until the pilot give her the wheel for the island or Kentucky shore.

X-question. You have stated, in your examination-in-chief, that
131 the Katie floated down about a mile below where the collision occurred, and that she then sunk, and that after she had sunk, the Des Moines came down to her, and took off what cargo she could get and the people. Is this not the truth? Did not the Des Moines shortly after the collision occurred come alongside of the Katie, make fast to her, and tow her to the island shore, and then put out lines upon her, and fasten her?

Answer. That is not the truth. It is the truth this far. She never came near us until where the wreck now lays. Then she had to make her line fast to our hog chain brace to stay alongside of us. Then the Des Moines crew and part of my crew put out the lines, which lines belonged to the Katie; and this is the true way of it. I was examined as to this collision by the local board of inspectors of Pittsburg, Pa. Their names were Joseph French and Samuel Walker, I believe. I do not remember the date; I know it was a cold day. I swore the same as near as can remember, as I have sworn now.

Question. Did you, at that time, make this statement under oath: "W'm Wolfendale says he was mate on board the Katie, and that they left Evansville on the 22d of November, 1864, at 7 o'clock p. m., bound to Nashville, and arrived about one mile above Diamond Island at 9 o'clock same evening; and the Katie was descending the river
132 about 200 yards from the Indiana shore, and the Des Moines gave two signals with the whistle, which was answered by the Katie, and we kept a straight course down the river?"

Answer. I think I made that statement, but I will not be responsible for the distance, as the distance is so deceiving after night. This statement was true when I made it, to the best of my knowledge and belief.

Question. Did you, in your examination before said inspectors, say that the boats were 200 yards from the Indiana shore when they came together?

Answer. Do not think I did. Think I stated near about the same that I have done now, to the best of my belief. Think the collision occurred more than 200 yards from the Indiana shore.

Question. You stated, in your examination-in-chief, that the Des Moines, at the time of the collision, had but one pilot on board. How do you know that?

Answer The mate told me so, and I know nothing about it, but what I was told, and what I saw, viz, the master taking hold of the wheel, and pulling it the other way, as I have stated; and also that she lay at Evansville until after daylight, trying to get another pilot. We had a bar on our boat. She was a passenger boat as well as a freight boat. She could accommodate about 20 passengers. There was a little
133 difficulty on board in the morning between the watchman and myself.

(Answer of witness objected to as irrelevant, and not proper cross-examination.)

This was the only difficulty I know of on board. There was some shooting done by the second clerk; this was part of the same fight.

Direct examination resumed:

Both the parties who had the difficulty were discharged before we left Evansville, and their places supplied with new men.

(Signed) WM WOLFENDALE.

Ja's A. Carrol.

The deposition of James A. Carroll on behalf of the libellants taken before Robert A. Hill, notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the said county of Vanderburgh, on the 23rd day of January, A. D. 1867.

JAMES A. CARROLL, occupation, pilot; deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

Ques. 1. What is your name, age, occupation, and how were you employed in November, A. D. 1864?

Ans. 1. J. A. Carroll, is my name; I am twenty-four years of age; I am pilot on steamboats; I was a pilot on the steamer Carrie, in November, 1864.

134 Ans. 2. I know of the steamer Katie, and that she was running in the Evansville and Nashville trade, in November, 1864.

Ans. 3. During November, 1864, I know that Gus. Mellon, and Ja's A. Damron, were running as pilots on the steamer Katie.

Ans. 4. I know the reputation of Gus. Mellon and James A. Damron as pilots, and I am also personally acquainted with them both as pilots. They both rank as first-class pilots.

Ans. 5. They are both pilots in the Evansville and Nashville trade. I have run with them both in the capacity of pilot.

Ques. 2. Do you know the value of the steamer Katie, in November, 1864? and, if yea, please state.

Ans. 2. I judge she was worth fifty thousand dollars. I know the boat was a new boat; she was a first-class stern-wheel boat.

Cross-examination by counsel for the respondent:

I form my opinion of Mallon and Damron being first-class pilots from being on the same boat with them as pilot. That is what I mean when I say that they have the reputation of first-class pilots. I was on a boat with one of them, Mr. Mallon, about two months before the time of the collision. I was on a boat with Mr. Damron about three months before the collision. I don't know anything personally about this matter. I saw the Katie about four or five days before the collision; I don't remember exactly. I judge the value of the Katie by being on a

135 boat of the same class that was valued at fifty thousand dollars. I went with parties to look at the Katie, who were thinking of purchasing her. I never bought or sold steamboats myself.

Ques. Is your opinion of the value of the Katie drawn from any other source than what was considered by some person, the value of the Carrie?

Ans. It was by the way steamboat stock was selling at that time, my own opinion that she was worth that. It was by hearing other men say that she was worth that amount.

Ques. You speak of the Katie being a first-class stern-wheel packet; was she an ordinary first-class stern-wheel packet?

Ans. She was. There was one other boat like her in the trade; she

differed, in the way her machinery was placed, from ordinary stern-wheel packets. The only difference was in her boilers being placed different from the boilers of other steamboats and having one smoke-stack.

Re-examination by libellants' counsel:

I am acquainted with the general estimation in which Mellon and Damron are held as pilots, and know them to be regarded as first-class pilots.

(Signed) J. A. CARROLL.

John J. Sinzick.

136 The deposition of John J. Sinzick on behalf of the libellants, taken before Robert A. Hill, notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the said county of Vanderburgh, on the 23d day of January, A. D. 1867.

JOHN J. SINZICK, of lawful age, occupation merchant, deposeth and saith in answer to interrogatories and cross-interrogatories as follows, viz:

I was acquainted with the steamer Katie, during November, 1864. I know who were running on her as pilots at that time; they were Gus. Mellon and Ja's Damron.

Ques. Have you any personal knowledge of their capacity as pilots, and do you know what is the general estimation in which they are held as such?

Ans. I have as far as hearing captains, pilots, and steamboat owners speak of their services. They were considered as first-class pilots. I am personally acquainted with them. The Katie was worth between thirty-five and forty thousand dollars. I think she was worth every cent of it in November, 1864. I judge from what other steamboats did sell at.

Cross-examined by respondent's counsel:

I am a merchant in this city. I am engaged in the business of supplying steamboats with boat stores. I have often been in companies where the reputation of Mellon as a pilot was particularly discussed.

137 The qualifications of different pilots about the work that they have done—knowing the river, being careful, &c., are frequently discussed among steamboat men. I don't know anything about Mr. Mellon's conduct on the occasion of the collision. I have never heard anything said about Mr. Mellon's habit of sobriety. [I have seen him once or twice when I thought he had too much, but it was when he was not employed.]

(The foregoing question and answer in brackets is objected to by counsel for libellant.)

At or about or before the time of the collision, I had not bought or sold steamboats, but since that time I have owned steamboat stock. I have never heard any one say what they would give for the Katie, but during the war, I kept myself posted as to the value of steamboats. I judged her value by her being a new boat with new machinery. I took it to be new. I looked at it; she was light draught. I never examined her with a view to buying her, but I have looked at her, and I considered her to be a first-class boat of her size. I did not make such a careful examination as if I was going to buy her, but I have been all

over the boat, have looked into her hold, but have never been in it. My opinion was not formed in any degree by what other men said. I do not know when she was built or what she cost—I never enquired. I judged her material to be new, but never enquired. I don't know I would consider her to be worth as much as a stern-wheel boat built on the usual plan.

138 Ques. When you state that during the war you kept yourself posted as to the value of boats, and that this is your means of judging the value of the Katie; how do you mean you kept yourself thus posted?

Ans. By being present when people were buying and selling steamboats, by seeing accounts of different boats being sold, by being told by owners of different steamboats what it cost to build them. I cannot say how many actual sales I was present at.

(Signed) JOHN J. SINZICK.

Henry Frederick.

The deposition of Henry Frederick on behalf of the libellants, taken before Robert A. Hill, notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the said county of Vanderburgh, on the 23d & 24th day of January, A. D. 1867.

HENRY FREDERICK, of lawful age, deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

My name, Henry Frederick. I am thirty-two years old, and was employed as carpenter on the steamboat Katie in November, 1864. I was on board the steamer Katie as her carpenter at the time of her collision with the steamer Des Moines. The Katie left Evansville, Ind., about or a little after dark, and was on her way to Nashville. She proceeded on her voyage until she reached a point near West Franklin, Ind. The Katie's signals were there given. I was in the engine-room at the

139 time. I started from the engine-room to look out of doors. I saw a boat near by coming across the river towards the Katie, which proved to be the steamer Des Moines. Then I went back to the engineer & told the engineer to look out for something—I expected a collision. It was dark at the time—the Des Moines appeared to be from a hundred and fifty to three hundred feet distant. I judge of the distance from the light from the fire doors of the Des Moines—the time was very short from that until she struck the Katie. She struck the Katie somewhere from twenty to twenty-five feet from the stem on the right or starboard side. It cut a hole in her side. When I came out forward, I heard the water rushing in; she sunk in about ten minutes. The signal lights of the Katie were burning when I came out of the engine-room, right after the collision. The mate of the Des Moines took down a signal light of the Katie, by consent of the mate of the Katie, after the collision. The mate of the Des Moines asked the mate of the Katie if he could have it, and he said yes, as they would get broke any how. It was burning when it was taken down. I think I heard signals also given by the Des Moines—they were answered by the Katie. I am certain they were answered by the Katie.

Cross-examined by counsel for respondent:

I am not a river man now. I quit it about a year ago. Before the collision, for four or five years I was a river man by occupation,

140 but for about a third of the time was on shore. I had been

running that season on the river about two months of the time in the Evansville and Nashville trade. I had been a carpenter on the Katie about two months. I was back in the engine-room with the engineer when I thought I heard the signal of another boat. At that time I knew nothing of the position of the Katie in the river. I can't tell how far she was from the Indiana shore, I was not doing anything in particular at that time. After the signals of the Katie were given, I went out on the starboard side about one-third of the way from the stern to look to see what was going on. I saw a steamboat coming towards us on the starboard side across the river, and it appeared to me that she would either cross our bows or strike us. I saw the light from the fire doors and saw that she was a larger boat than ours; she was coming out towards us across the river. I can't tell how close she was to the Indiana shore. I cannot state that our boat was not quartering toward the island shore, I don't know how she was quartering. I can't state how far the Des Moines was from the Indiana shore. When I first came out from the engine-room, I took the Des Moines to be from our boat, at the nearest point, from one hundred and fifty to three hundred feet. I know I heard the signals of the Katie; she gave
141 two whistles. After that and immediately before she struck, the pilot gave the engineer signals to stop the engines; when the pilot gave the signal to stop the engine, the engineer stop'ed the engine—just before they struck. At the time that the two boats come in contact—just at that time—I suppose the motion of the engines was not stop'ed. There were no signals between the time of the two whistles and the signals to stop, that I have just mentioned—none that I heard. I was in the engine-room & would have heard, I think, if there had been any. There were no bells to slow the boat that I heard. The Katie was coming down stream, and the current was pretty swift. At the moment of the collision the Katie was running at the same speed that she had been running—I think she was. Before the collision, I was not in a position where I could see the signal lights of the Katie; the signal lights were on the derricks on the forward part of the boat; they come up with harricane deck.

The further taking of these depositions is here continued by consent of parties until to-morrow morning at 9 o'clock.

JANUARY 24th, 1867.—The further taking of these depositions is here resumed at 9 o'clock, a. m. January 24th, 1867.

It had been the practice on the boat to put the signal lights on the chimney, but three or four trips before that, one of the arms projecting on either side from the chimney, on which the lights were hung, had been broken off, and after that time the lights had been hung out on the derrick. When the mate of the Des Moines took the light down,
142 he was standing on the railing of the boiler deck. He reached up his hand and took the light down. I saw only one light taken down by the mate of the Des Moines; it was a red light. I saw the watchman light two lights that night. I think I saw them both up afterwards. I think I saw them both up about an hour before the collision. I am certain I saw the shades of the lights. I am not sure I saw the lights, but am sure I saw the lights where they threw the lights off from them.

Are you certain that this light thus thrown out came from two separate lanterns?

I think I am. It could not come from one the way the colors were. The colors were a red and a blue light. I was on the forecastle of the

boiler deck about an hour before the collision, when I saw these lights. The lights were then hanging on the derricks.

Suppose that the lights had been nailed or screwed on the nosing of the hurricane roof, would this have been about the place where they hung from these derricks?

If they had been screwed on the nosing of the hurricane deck, they would have been rather below where they hung on the derricks.

How much below?

About the height of the lantern and handle, I think.

At any time after the collision did you see more than one red light? I only saw one red signal light?

143 When the mate of the Des Moines took down this signal light, was there any other there?

Not as I know of.

When the two boats came in contact, did they remain for any time together or immediately separate?

Right after they struck they *ktuder* swung side to side, and in a minute or two they left one another.

Which way did the Katie swing and what was her position in the river just after the cŏntact?

I don't know what her position was in the river, for I could not see the shore. I didn't look at the shore to notice that, and don't know whether I could have seen the shore if I had looked, coming out from the light. It was dark.

Was it a dark night or a light night.

It was a dark night as well as I remember, didn't notice whether it was a starlight night or not.

Can you tell which way the Des Moines went and what her position in the river was immediately after the collision?

When the collision happened, she came across and struck the Katie almost on a square, and then swung aro'nd. And then they swung round side and side. I cannot say just how the Des Moines laid in the river immediately after the collision, but I think both boats laid bows down stream and quartering to the shore after they swung together. I think they were quartering to the island shore.

144 Did you see the pilot of the Katie immediately before or after the collision?

In the course of four or five minutes after they struck I saw a man in the pilot-house that I took to be him.

What was the difficulty at Evansville just before the Katie left there?

Not any as I know of.

Was there not a row or fight among some of the officers or men just before leaving Evansville?

None that I saw.

Were not some of the men intoxicated or under the influence of liquor?

I don't know that they were or not.

Did not you notice that some of them were?

They were not when we left here to my knowledge.

When you came out from the engine-room on to the deck as above described, whom did you see, if any one, on the deck of your boat?

I saw one or two men, who they were, I don't know.

What were they doing?

I did not notice what they were doing any more than they were walking toward the bow of the boat.

Do you know whether or not the engineer, Bill, as you call him, who was at the engine, heard the signal of the whistles given by the Des Moines?

I don't know that he heard them or not. I think I heard them; I heard something. I heard them plain off the Katie.

How were these whistles of the Katie? Were they loud or smothered?

I think they were loud. I heard them plain there in the engine-room.

145 Do you know what the position of the Des Moines was in the river just before the collision?

From what I saw she came almost on a square towards the Katie, either to run her bow or to strike her. If we were straight in the river, the Des Moines came from the Indiana shore towards the Kentucky shore at the time and before she struck.

Then do you state that the Des Moines was in the river with her stern to the Indiana shore, and her bow cross-wise to the island shore?

If we were straight, headed down the river, then the bow of the Des Moines headed for the Kentucky shore.

Then were you straight down the river?

I don't know.

Then you don't know how the Des Moines was lying, do you?

I suppose she was coming from the Indiana, going to the Kentucky, shore.

Re-cross examined by counsel for libellant:

When you went out of the engine-room the first time, as stated in a former answer, how long were you absent?

Between a half a minute and a minute, I suppose.

Do you know whether the engineer's signal bell was sounded while you were out of the engine-room, or not?

I don't know.

Do you know what had become of the other signal light after the collision? if so, state.

I don't know what became of it any more than the crew thought
146 that it was jarred loose by the collision. This was the supposition or talk of the crew.

(The talk of the crew objected to by counsel for respondent.

Have you no other means of knowing that it was jarred loose, except what the crew said?

No; I was not out forward at the time.

The boat had but one chimney; what was the best place for the signal lights upon a boat having but one chimney?

(Objected to by counsel for respondent.)

It was generally supposed that some place forward about the derricks was the best place for them.

Recross examined by counsel for respondent.)

Was the signal light or lights of this boat ever put on these derricks, to your knowledge, until this crane or arm extending from the chimney was broken or out of order?

(Objected to by counsel for libellant.)

Not as I remember now.

If, during the time you were absent from the engine-room, any signal had been given by the pilot to the engineer, would you not either have heard it or known it by the change in the motion of the engines when you immediately returned?

(Objected to by counsel for libellant.)

I might, if it had been on a different occasion, but I was excited and I did not pay attention. I never paid any attention to the engine. It was so close I just went back and told the engineer.

(Signed.) HENRY FREDERICK.

147 *Clark M. Shelby.*

The deposition of Clark M. Shelby, on behalf of the libellants, taken before D. B. Cassidy, a notary public in and for the county of Lyon, and State of Kentucky, at the town of Eddysville, county of Lyon, and State of Kentucky aforesaid, on the 6th day of February, A. D. 1867.

CLARK M. SHELBY, deposeth and saith, in answer to interrogatories, as follows, viz:

Question. Where were you and what were you doing during the month of November, 1864?

Answer. I was in Evansville, Ind., with my wife and daughter and Miss Florence O'Hara, in the month of November, 1864, and we all took passage as passengers on the steamer "Katie" for Eddysville, Ky. The boat left Evansville about dark, and we had proceeded down the Ohio River until about 9 o'clock at night, the same night out from Evansville; I was sitting in the ladies' cabin near the stove, in company with my wife and daughter and Mrs. McConnell, when I heard two distinct whistles from the steamer "Katie;" after waiting a short time & heard no response, and believing we were meeting another steamboat, and feeling some solicitude about not hearing the response which is usually designated or *giving* by steamboats meeting each other, I went out to see what was the matter. I went out on, or rather quartering from, where I was sitting on the starboard or right side, when I discovered a large steamboat coming directly towards our boat, the "Katie." The large steamboat was coming towards the
148 "Katie" from the Indiana shore, nearly at right angles towards the "Katie," and she, the large boat, struck the "Katie" at or near the bow, or rather a little aft of the bow, on the starboard or right side. Upon discovering the boat coming towards the "Katie," I exclaimed, "Good God, we are coming in collision with a large boat," which I afterwards discovered was the steamer "Des Moines." I ran immediately to where the ladies were, and desired them all to go up on hurricane deck or top of the steamer "Katie," which they, as well as myself, did accordingly. Soon after getting on the top of the boat, Capt. McConnell, who was the captain of the "Katie," came to us and remarked that the "Katie" was sinking. I asked him to signal the other boat to come alongside and take us off. He said he had done so, but would do so again. He did do so, and in the space of about ten minutes the "Des Moines" came alongside of the "Katie," and we all went below to the cabin, or lower deck, I am not positive, and we stepped from the "Katie on to the "Des Moines." We then went up into the cabin of the "Des Moines," and then back to the ladies' cabin. Afterward, getting back to the cabin with my wife and daughter, I wished to get my luggage from the "Katie." I spoke to a person whom I took to be a soldier, or non-commissioned officer, (having learned that there was about seven hundred soldiers on board of the Des Moines,) to try and get my baggage from the "Katie." I asked
149 the person who was the commander of the troops, and he referred me to a man whom I had noticed was sitting at a table

playing cards with the insignia of a colonel of the United States on his shoulders or coat. I then went to this table and asked the same question, who was the commander of the troops, and this person told me, he was, which I afterwards learned was Col. Seibert. The colonel told me had no objection that I should employ his men to get my baggage from the Katie. I then employed the first man I had spoken to, and he called some five or six men and they brought my baggage from the "Katie" on board of the "Des Moines," and I paid them ten dollars for doing so. After we were conducted to the guard of the Des Moines by Capt. McConnell, he remained on the "Katie," and whilst we were in the cabin of the "Des Moines," Mrs. McConnell, the wife of the capt. of the "Katie," inquired of me where her husband was, when I replied, that he was yet on board of the "Katie," at which she expressed great alarm for his safety, and Col. Siebert said to her not to be excited over it, that he was cool, that he had felt the shock, and had not left his seat at the table. I think, and thought at the time, Colonel Siebert was under the influence of liquor. He was frequently drinking what I thought was brandy or whisky. I remained up until the "Des Moines," arrived at Evansville, and Colonel Siebert, still, and during that time we was going to Evansville, remained at the table playing cards; and during the time there was considerable
150 noise and fuss below with the soldiers, and it was reported to this Colonel Siebert that the men were all drunk and fighting, by a soldier; the colonel ordered an officer whom I took to be a captain, to go down and see about it. He, this officer, put on his sword and pistols and went out, but returned and reported to Colonel Siebert, he thought the soldiers were all drunk and fighting. The colonel remarked "God dam them, let them fight," or something to that amount. The collision between the "Des Moines" and "Katie" took place at or near Diamond Island, in the Ohio River, about ten or fifteen miles below the town of Henderson, Kentucky. When the collision took place I think the "Katie" was very near the centre or middle of the river. The reason why I think so was, because I looked out which was the nearest shore to get to, being in a sinking condition, when the collision occurred. The "Katie" was going, or rather her position was straight down the river, whilst the Des Moines position was rather quartering across the river from the Indiana shore to the Kentucky shore. I know that from the fact I could see the full length of the Des Moines, and saw she was a much larger boat than the "Katie." Captain McConnell and one of the pilots remained on board of the Katie until she listed over and was sinking, rendering all the assistance they could, and at last Capt. McConnell, in jumping from the "Katie" to the "Des Moines," struck and injured himself very much, so much that he
151 was compelled to go to bed; and the pilot in jumping from the Katie to the Des Moines fell into the river, but was rescued by some persons from being drowned. The gentleman who commanded the Des Moines at the time, was a man of medium height, rather heavy built, and (I would suppose) about 40 or 45 years of age. He had on a fur cap, and looked to me something like a Dutchman. I could not tell, as it was night. My wife asked him in my presence if his boat, the Des Moines, was injured by the collision. The captain remarked to her, "Not at all, his boat, the Des Moines, was all oak, that she was built for the Missouri River trade, where she had met with many heavier shocks than that." Whilst on the voyage from the place of the collision on board of the Des Moines to Evansville, Ind., I was out on the guards frequently, and I noticed how and in what way the Des Moines was running, and I thought she was badly steered, as we came

very near running into another steamer; her course was rather zigzag in running, having no particular place in the river. I have been travelling on board of steamboats on the western rivers for thirty or perhaps thirty-five years, and I believe I would know from so travelling, when a steamboat is properly steered or handled. I spoke to some one on board of the Des Moines regarding the way she was steered; the person whom I addressed had on citizens dress, and whom I took to be
a person belonging on board, as she, the Des Moines, had
152 no passengers except those from the Katie, and this person so spoken to by me, told me the boat, the Des Moines, had no regular pilot, but had a mate steering the boat at the time. I have no acquaintance with the libellants or respondents to this suit, excepting that I was introduced to Capt. Hazlett yesterday, whom I never saw until then to know him. I have no interest, directly or indirectly, in the issue of this suit. I was only, as heretofore stated, just a passenger on board of the Katie at the time the collision took place, and I reside more than one hundred miles from the city of Saint Louis, Mo. I am fifty-two years of age. I am a farmer, and reside in Lyon County, State of Kentucky, and have so resided about nineteen years. I have resided about seven years of my life in New Orleans, and have traveled a great deal of my life on steamboats on the southern rivers.

(Signed) C. M. SHELBY.

John Biggs.

The deposition of John Biggs, on behalf of the libellants, taken before Edmund T. Allen, a notary public for the county of St. Louis, in the eastern district of Missouri, at the city of St. Louis, in the said county of St. Louis, on the 18th day of April, A. D. 1867.

JOHN BIGGS deposeth and saith in answer to interrogatories and cross-interrogatories as follows, viz:

1st int. State your residence, age, and occupation.

153 A. I reside in Columbiana County, Ohio; am 33 years of age, and a ship carpenter.

2nd int. Are you acquainted with the steamboat Des Moines?

A. No, I am not. I have seen her.

3rd int. Do you know anything of the Katie?

A. Well, I knew when the Katie was built in Pittsburg, or finished there. I could'nt be positive where her hull was built.

4th int. Do you know anything about the sinking of the Katie on the Ohio River—do you know when it was?

A. I could'nt tell you exactly the month. I think it was in December, in '65, I think.

5th int. Did you see the Katie after she was sunk?

A. Yes, sir; I saw her after she was sunk. I saw her hull when it was partly out of water. The forward part was where the cut was.

6th int. Do you know how long she had been sunk when you saw her?

A. She had been sunk in December, I think it was, and I saw her about the first of August of the next year—the next summer afterwards.

7th int. What did you go to see her for?

A. I went to see if she could be raised.

8th int. In what condition was the boat—I mean the hull of the boat—how was she lying at the time you went there and was it?

A. It was part out of the water on one side from her boilers; her boilers went way back aft through. I suppose there was 60 feet of her on one side.

154 9th int. Which part was out of water, the bow or the stern?

playing cards with the insignia of a colonel of the United States on his shoulders or coat. I then went to this table and asked the same question, who was the commander of the troops, and this person told me, he was, which I afterwards learned was Col. Seibert. The colonel told me had no objection that I should employ his men to get my baggage from the Katie. I then employed the first man I had spoken to, and he called some five or six men and they brought my baggage from the "Katie" on board of the "Des Moines," and I paid them ten dollars for doing so. After we were conducted to the guard of the Des Moines by Capt. McConnell, he remained on the "Katie," and whilst we were in the cabin of the "Des Moines," Mrs. McConnell, the wife of the capt. of the "Katie," inquired of me where her husband was, when I replied, that he was yet on board of the "Katie," at which she expressed great alarm for his safety, and Col. Siebert said to her not to be excited over it, that he was cool, that he had felt the shock, and had not left his seat at the table. I think, and thought at the time, Colonel Siebert was under the influence of liquor. He was frequently drinking what I thought was brandy or whisky. I remained up until the "Des Moines," arrived at Evansville, and Colonel Siebert, still, and during that time we was going to Evansville, remained at the table playing cards; and during the time there was considerable
150 noise and fuss below with the soldiers, and it was reported to this Colonel Siebert that the men were all drunk and fighting, by a soldier; the colonel ordered an officer whom I took to be a captain, to go down and see about it. He, this officer, put on his sword and pistols and went out, but returned and reported to Colonel Siebert, he thought the soldiers were all drunk and fighting. The colonel remarked "God dam them, let them fight," or something to that amount. The collision between the "Des Moines" and "Katie" took place at or near Diamond Island, in the Ohio River, about ten or fifteen miles below the town of Henderson, Kentucky. When the collision took place I think the "Katie" was very near the centre or middle of the river. The reason why I think so was, because I looked out which was the nearest shore to get to, being in a sinking condition, when the collision occurred. The "Katie" was going, or rather her position was straight down the river, whilst the Des Moines position was rather quartering across the river from the Indiana shore to the Kentucky shore. I know that from the fact I could see the full length of the Des Moines, and saw she was a much larger boat than the "Katie." Captain McConnell and one of the pilots remained on board of the Katie until she listed over and was sinking, rendering all the assistance they could, and at last Capt. McConnell, in jumping from the "Katie" to the "Des Moines," struck and injured himself very much, so much that he
151 was compelled to go to bed; and the pilot in jumping from the Katie to the Des Moines fell into the river, but was rescued by some persons from being drowned. The gentleman who commanded the Des Moines at the time, was a man of medium height, rather heavy built, and (I would suppose) about 40 or 45 years of age. He had on a fur cap, and looked to me something like a Dutchman. I could not tell, as it was night. My wife asked him in my presence if his boat, the Des Moines, was injured by the collision. The captain remarked to her, "Not at all, his boat, the Des Moines, was all oak, that she was built for the Missouri River trade, where she had met with many heavier shocks than that." Whilst on the voyage from the place of the collision on board of the Des Moines to Evansville, Ind., I was out on the guards frequently, and I noticed how and in what way the Des Moines was running, and I thought she was badly steered, as we came

very near running into another steamer; her course was rather zigzag in running, having no particular place in the river. I have been travelling on board of steamboats on the western rivers for thirty or perhaps thirty-five years, and I believe I would know from so travelling, when a steamboat is properly steered or handled. I spoke to some one on board of the Des Moines regarding the way she was steered; the person whom I addressed had on citizens dress, and whom I took to be a person belonging on board, as she, the Des Moines, had
152 no passengers except those from the Katie, and this person so spoken to by me, told me the boat, the Des Moines, had no regular pilot, but had a mate steering the boat at the time. I have no acquaintance with the libellants or respondents to this suit, excepting that I was introduced to Capt. Hazlett yesterday, whom I never saw until then to know him. I have no interest, directly or indirectly, in the issue of this suit. I was only, as heretofore stated, just a passenger on board of the Katie at the time the collision took place, and I reside more than one hundred miles from the city of Saint Louis, Mo. I am fifty-two years of age. I am a farmer, and reside in Lyon County, State of Kentucky, and have so resided about nineteen years. I have resided about seven years of my life in New Orleans, and have traveled a great deal of my life on steamboats on the southern rivers.

(Signed) C. M. SHELBY.

John Biggs.

The deposition of John Biggs, on behalf of the libellants, taken before Edmund T. Allen, a notary public for the county of St. Louis, in the eastern district of Missouri, at the city of St. Louis, in the said county of St. Louis, on the 18th day of April, A. D. 1867.

JOHN BIGGS deposeth and saith in answer to interrogatories and cross-interrogatories as follows, viz:

1st int. State your residence, age, and occupation.

153 A. I reside in Columbiana County, Ohio; am 33 years of age, and a ship carpenter.

2nd int. Are you acquainted with the steamboat Des Moines?

A. No, I am not. I have seen her.

3rd int. Do you know anything of the Katie?

A. Well, I knew when the Katie was built in Pittsburg, or finished there. I could'nt be positive where her hull was built.

4th int. Do you know anything about the sinking of the Katie on the Ohio River—do you know when it was?

A. I could'nt tell you exactly the month. I think it was in December, in '65, I think.

5th int. Did you see the Katie after she was sunk?

A. Yes, sir; I saw her after she was sunk. I saw her hull when it was partly out of water. The forward part was where the cut was.

6th int. Do you know how long she had been sunk when you saw her?

A. She had been sunk in December, I think it was, and I saw her about the first of August of the next year—the next summer afterwards.

7th int. What did you go to see her for?

A. I went to see if she could be raised.

8th int. In what condition was the boat—I mean the hull of the boat—how was she lying at the time you went there and was it?

A. It was part out of the water on one side from her boilers; her boilers went way back aft through. I suppose there was 60 feet of her on one side.

154 9th int. Which part was out of water, the bow or the stern?

A. The bow.

10th int. How was that resting, on the shore or on a bar?

A. On a bar—you might say on a shore too. It was on the island side of the river. It was out on a bar; I call it a bar.

11th int. Did you make any effort to raise her?

A. No; I went to work at her, shovelled the sand out of her, and out of the cut where she was cut down, and the river commenced rising, and I went off and left her.

12th int. Did you examine the cut in her?

A. Yes.

13th int. Give us a description of her—how she was injured?

A. She was cut in to her capstan. Her capstan was shoved over, the spindle of the capstan was bent, and the top knocked off.

14th. int. On which side of her was the wound?

A. On the starboard side.

15th int. What was about the width of the cut?

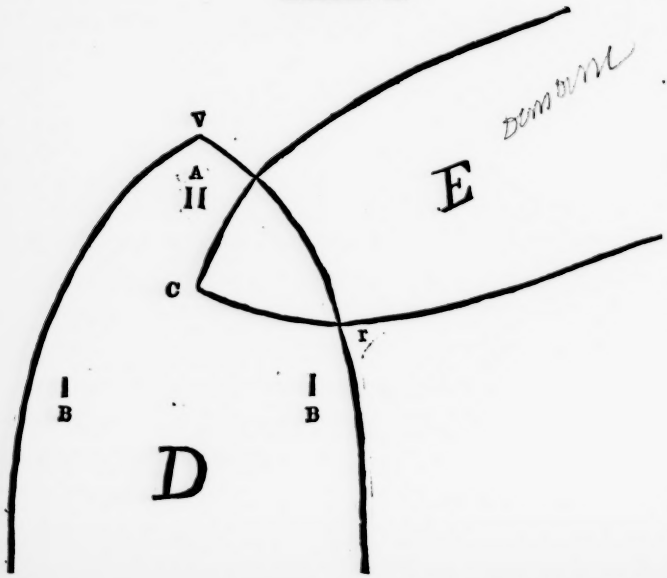
A. Well, I should think it was about twelve feet at the start, and close to the keelson it was'nt so wide as that—it was the same mark that a boat's bow would make running into a boat in that way.

16th int. Can you describe on paper the manner in which the boat was injured—the wound?

A. I might give you a kind of an idea of it. This is the way it was:

155 (Deponent made the diagram hereto annexed, marked "Exhibit X," upon which he said A represented the "bits;" B B the side staunchions; C the capstan; D the Katie; and E the Des Moines.)

EXHIBIT X.



A, bits.
B, side staunchions.
C, capstan.
D, Katy.
E, Des Moines.

17th int. Who else was with you when you went there to try and raise her?

A. I went alone. I merely went there to see if anything could be done.

18th int. Where were you living at that time?

A. I was running on the steamer Leoni Leoda. I stopped off of a trip to go up there.

Cross-examination:

1st x-int. What is your occupation now?

A. I am a carpenter.

2nd x-int. How long has that been your occupation?

A. Oh, it has been that, more or less, for the last 15 years.

3rd x-int. Have you any other occupation?

A. No, sir.

4th x-int. You were carpenter on steamboats?

A. Yes.

5th x-int. What time was it that you looked at this hull—this boat?

A. The first of August, as near as I can recollect, '65, I believe it was. I am not positive about the year she sunk; '65, I believe it was.

6th x-int. Are you certain about the year—are you certain it was in '65?

A. It wasn't '66—it was '65.

7th x-int. Are you certain?

A. I am pretty certain it was '65, yet I might be mistaken about the year—it might be '64. I went to look at the boat in '65; that I am certain of.

156 8th x int. You don't know, of course, what change had or had not taken place in the condition of the boat after she sunk, and before you saw her?

A. There couldn't have been much change.

9th x-int. Why not?

A. Well, where she was laying she settled on the bar when she sunk.

10th x-int. Wouldn't a year or a year and a half make some change in her?

A. It might; it was owing to what kind of a place the boat's hull settled in; if on a flat bar, there might be no change.

11th x-int. How far from the jack-staff of the boat when you saw it did the break commence?

A. Well, I suppose, it would be about 6 feet—well, say 5 feet.

12th x-int. From the jack-staff?

A. Yes.

13th x-int. On which side?

A. On the starboard side.

14th x-int. And how far did it extend?

A. I should say the break was about 10 feet wide where it started; that is, there was about 10 feet of a cut in her hull.

15th x-int. Then you mean that the break ended about 10 feet from the place where it commenced?

A. Yes, sir; thereabouts.

16th x-int. You didn't know anything about that collision itself—you were not present?

A. No.

17th x-int. Were you in either of the boats, or did you know anything about it from your own knowledge?

A. I saw the Katie just a few days before she sunk.

18th x-int. Did you see her at the time of the collision?

A. No.

157 19th x-int. From whom did you first hear any account of the collision?

A. Well, I heard it from the captain of the Cary first.

20th x-int. That was one of Hazlett's boats?

A. Yes; he had an interest in her.

21st x-int. He described to you the collision?

A. No; I heard the boat was sunk; that the Des Moines had run into her.

22nd. x-int. Did he tell you how?

A. No.

23rd x-int. Did he tell you how the Des Moines run into her?

A. No.

24th x-int. Did any one ever describe to you generally how this collision happened?

A. No, sir; no one.

25th x-int. You hav'n't talked with anyone about it?

A. No.

26th x-int. How did you happen to come here?

A. On the steamer Cary.

27th x-int. Who asked you to come up here?

A. Well, Capt. Hazlett requested me to come up here.

28th x-int. When did you see him?

A. A few days ago.

29th x-int. Did he tell you what he wanted you for?

A. In this case—that was all he told me—to tell what I *knowed* about the cut that was in her.

30th x-int. Didn't he talk with you about how the collision happened?

A. No, sir.

31st x-int. Not a word?

A. Not a word.

32nd x-int. Had you talked with him before about the cut?

A. No.

158 33rd x-int. How did he know you knew anything about the cut?

A. Because he *knowed* I had been in the wreck.

34th x-int. How did he know that?

A. I was sent there by the mate of the Leoni Leoda, by Hazlitt's orders, I suppose.

35th x-int. This figure "E," upon "Exhibit X," represents what?

A. The Des Moines?

36th x-int. Coming into the Katie, does it?

A. Yes, sir.

37th x-int. How do you the Des Moines came into the Katie?

A. I know they say she did; I didn't see her run into the Katy.

38th x-int. But you intended by this diagram here to represent the Des Moines running into the Katie and making a break in this side of her hull?

A. Yes.

39th x-int. What do you call the distance on the diagram from "q" to "r"?

A. Well, I told you I thought the break was about ten feet. That is not drawed on *no* scale at all.

40th x-int. Then, aft of the stanchion B, there was no break in the boat?

A. No serious break; a little fractured, but not serious.

41st x-int. How far into the hull of the boat did this break extend?

A. About, I would say, 11 feet—10 or 11 feet.

42nd x-int. You never saw the Des Moines—you don't know where she was broken?

A. No, sir; not after collision, I didn't.

43rd x-int. Was the break wholly out of water when you saw her?

A. Yes, sir.

44th x-int. No portion then of the broken part was under water?

A. No; the broken part was out of water.

159 45th x-int. Where was she laying on the island shore—what part of the island shore?

A. Near the middle of the island, I should judge. Opposite the State of Indiana. There was no town opposite where she was laying.

46th x-int. Do you know where the collision occurred?

A. It occurred at Diamond Island—I believe they call it Diamond Island—that is where it occurred.

47th x-int. But you don't know the spot?

A. Well, I couldn't tell you just exactly the spot—between the head and the middle of the island—and this Katie was laying about the middle of the island.

48th x-int. With her bow in shore and her stern under water?

A. No; she had her head down stream and her stern up stream. Her stern had gone down. She broke down right at her stern—about where her boilers stood. They stood back aft, about, I would say, 40 feet from her stern, perhaps. There was where she was broken down, right at her boilers.

49th x-int. I understand you to say that, supposing "V," in diagram X, to be the jack-staff of the boat, that the part of the bow just to the starboard of the jack-staff was not broken in at all?

A. Well, it was fractured, cracked, but the plank were not all cut away. They were not broken clean in, like the other.

50th x-int. And so the part aft of the letter "V" was not broken in, but merely fractured?

A. Yes.

51st x-int. How long were you at this wreck?

A. I was there 5 days—about 5 days.

160 52nd x-int. What where you doing there?

A. I went down there to see if there could be anything done; and I shovelled the sand off of the Katie's head there, and out of this cut around her capstan.

53rd x-int. Was the break covered up by the sand when you first went there?

A. Not all of it.

54th x-int. Why did you do so?

A. I wanted to see where the cut went to. I wanted to get the capstan out, and to do that I had to go down into her hull.

55th x-int. Why did you have to shovel the sand out of the break in order to get down to the capstan; why didn't you shovel the sand out about where the capstan was?

A. I wanted to have room to work.

56th x-int. Didn't you go there with the purpose of shoveling the sand out of that break, and looking at that break?

A. No; I did not.

57th x-int. But that was the first thing you did when you got there?

18th x-int. Did you see her at the time of the collision?
A. No.
157 19th x-int. From whom did you first hear any account of the collision?
A. Well, I heard it from the captain of the Cary first.
20th x-int. That was one of Hazlett's boats?
A. Yes; he had an interest in her.
21st x-int. He described to you the collision?
A. No; I heard the boat was sunk; that the Des Moines had run into her.
22nd. x-int. Did he tell you how?
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23rd x-int. Did he tell you how the Des Moines run into her?
A. No.
24th x-int. Did any one ever describe to you generally how this collision happened?
A. No, sir; no one.
25th x-int. You hav'n't talked with anyone about it?
A. No.
26th x-int. How did you happen to come here?
A. On the steamer Cary.
27th x-int. Who asked you to come up here?
A. Well, Capt. Hazlett requested me to come up here.
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29th x-int. Did he tell you what he wanted you for?
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A. No, sir.
31st x-int. Not a word?
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38th x-int. But you intended by this diagram here to represent the Des Moines running into the Katie and making a break in this side of her hull?
A. Yes.
39th x-int. What do you call the distance on the diagram from "q" to "r"?
A. Well, I told you I thought the break was about ten feet. That is not drawed on *no* scale at all.
40th x-int. Then, aft of the staunchion B, there was no break in the boat?

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50th x-int. And so the part aft of the letter "V" was not broken in, but merely fractured?

A. Yes.

51st x-int. How long were you at this wreck?

A. I was there 5 days—about 5 days.

160 52nd x-int. What where you doing there?

A. I went down there to see if there could be anything done; and I shovelled the sand off of the Katie's head there, and out of this cut around her capstan.

53rd x-int. Was the break covered up by the sand when you first went there?

A. Not all of it.

54th x-int. Why did you do so?

A. I wanted to see where the cut went to. I wanted to get the capstan out, and to do that I had to go down into her hull.

55th x-int. Why did you have to shovel the sand out of the break in order to get down to the capstan; why didn't you shovel the sand out about where the capstan was?

A. I wanted to have room to work.

56th x-int. Didn't you go there with the purpose of shoveling the sand out of that break, and looking at that break?

A. No; I did not.

57th x-int. But that was the first thing you did when you got there?

A. That wasn't the first thing. I shoveled the sand off of her decks a considerable way.

58th x-int. Was any one else with you?

A. No.

59th x-int. What was your purpose?

A. I wanted to see if the boat could be raised—if anything could be done for her.

60th x-int. You were not a wrecker?

A. No, not by profession.

61st x-int. And were you, a common carpenter on a boat, sent
161 for that purpose—to see if that boat could be raised?

A. Yes, and to see if there might be some of her wreck laying around loose.

62nd x-int. You were employed by Hazlitt to do this, or by men under his directions?

A. Yes, sir.

John J. Tomlinson.

The deposition of John J. Tomlinson on behalf of the libellants, taken before W. L. Fuqua, a justice of the peace in and for the county of Trigg, in the State of Kentucky, at the town of Canton, county of Trigg, & State of Kentucky aforesaid, on the 8th day of February, A. D. 1867.

JOHN J. TOMLINSON deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

Ques. by pl'ff. My age is 45 years; I am not in business at present: I reside in Canton, Trigg County, Kentucky. During the month of November, 1864, I was carrying on a distillery and steam saw-mill. About the 15th November, 1864, I left Canton, Kentucky, on the steamboat Katie, for Evansville, Indiana. Then on the evening of the 22nd November, 1864, I took passage on board of the steamboat Katie for Canton, Kentucky, from Evansville. We left Evansville about dark; then came on very quietly until we got about opposite Diamond Island. About nine o'clock at night I was sitting at table, taking a game of euchre. I heard the whi*lel* or whi*les* of another boat. Immediately after that our boat, the Katie, gave two whistles. In a very few
162 minutes after that I was thrown from my seat. Learning that we was run into by another boat, I immediately started down the steps to boiler deck. I saw then that there was a large hole knocked into our boat, and water was running in very rapidly. At that time the Katie was about the middle of the river, with her head pointing quar't'ing towards the Kentucky shore. I then saw another boat that seem' to be backing out from our boat, the Katie. The Des Moines was then backing out, with her head towards the Kentucky shore, or quart'ing towards the Kentucky shore; she was about opposite our boat in the river. I then went back into the cabin to assist the lady passenger' to the hurricane ro'f*t* of the Katie. In a few minutes after that the Des Moines came to our relief on the side of our boat, and we succeed*ing* in getting the passengers on board of the Des Moines. I knew it was the Des Moines from the fact that I got aboard of her with the other passengers. I will state, furthermore, that the S. B. Katie had two signal lights out that night, about the height of the hurricane roof, on each corner.

Ques. by plaintiff. What caused you to be thrown from your seat?

Ans. By the collision of the boats.

Cross-examined by defen't:

From the time I heard the two whistles of the Katie until I was thrown from my seat I don't remember of hearing any other signal. *They*
163 may have been other signals; I don't remember of hearing any. From the time I heard the two whistles of the Katie till the time I was thrown from my chair I should think from three to five minutes. When I got out I went out in front of the cabin and part of the way down the steps from my position. When on the steps I saw the condition of the Katie and the position of the Des Moines. At the time I thus saw the Des Moines she was quart'ing sli'tly towards the Kentucky shore. I can't state how far the Des Moines was from the Indiana shore. Both boat' was out in the river, and some distance from both shores. The bow of the Katie was pointing *quar*tly down toward the Kentucky shore. When I first got out of the cabin, and saw the boats, were, I suppose, about twenty yards apart. When I was out I saw parties on the deck of the Katie looking at the damage. I don't know how the lights were attached or put up, but I saw them, as I stated, at each corner of the hurricane roof. I saw them from the boiler deck in the front of the cabin—I can't say hanging or fast. I can't state how long before the collision it was I noticed the signal lights. I don't think it could be more than a half an hour or three-quarters before the collision when I was out on the boiler deck. The break in the Katie was between the steps and the cap*sil* and on the starboard or right-hand side. I did not see any officer or men on the Katie intoxicated.
164 I am certain I heard the 2 whistles of the Katie, and I have traveled a great deal on steamboats, and suppose' we were meeting another boat.

Re-examined by plaintiff:

The river is quite wide where the collision took place—I can't say how wide, and when I first went out from the cabin both boats seemed to be about the middle of the river.

(Signed) J. J. TOMLINSON.

Tho's E. Blake.

The deposition of Thomas E. Blake on behalf of the libellants, taken before W. S. Fuqua, a justice of the peace in & for the county of Trigg, in the State of Kentucky, at the town of Canton, in the county & State last aforesaid, on the 8th day of February, A. D. 1867.

THOMAS E. BLAKE deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

I am a resident of Canton, Trigg County, Kentucky, and about 58 years of age. My occupation is hotel-keeper. In the month of November, 1864, I was keeping hotel and selling groceries in the town of Canton, Ky. I think about the 19th of November, 1864, I went aboard of the steamboat Katie to go to Evansville, Ind., and, on the 22nd of November, 1864, I went aboard of the Katie at Evansville, Ind., to
165 return home. We left about dark, same day, and I suppose about 9 or 10 o'clock, after we left, I was sitting in the cabin, looking on seeing gentlemen playing a game of euchre, and I heard a boat whistle twice. The Katie answered properly—two whistles. A few minutes after, the Katie was struck. Somebody asked, "What is that?" I remarked,

"That boat has run into us." I went to the door to see, and stepped out on the guards to see. I saw the boat that struck us, away off—seemed to me to be a quarter of a mile off. I could see the light. I then ran in, gathered my carpet-bag, and hasten' upon the hurricane roof, for some had said the boat was sinking very fast, and my object was to get as far from the water as possible. I saw the boat that sunk us coming towards us; that relieve' me a good deal. As she neared the Katie I went down on to the guards of the Katie, threw my carpet bag on to the steamboat Des Moines, and manage' to get aboard myself, by the assistance of a soldier or two. I then return' to Evansville the same night on the Des Moines. The collision took place about the head of Diamond Island. When I first got upon the hurricane roof she was near the middle of the river, (Kat*t*ie,) and it was a starlight night.

Cross-examined:

I don't think I had been out on the deck at all previous to the
166 collision. The whistles *was* the first thing that attracted my attention. It was only a short time. I should not think it was five minutes from the time I heard the last whistle up to the time of the shock. From the time I heard the last whistle up to the time of the shock, I don't think I heard any whistle or bells. When I first ran out of the cabin, directly after the shock, I went out on the guard on the right-hand side. I saw the other boat a good ways off, and went directly back into the cabin and gathered up my carpet-bag, and went upon the hurricane roof. When I gotten upon the hurricane roof she was steaming up towards us. She then came up and took us in tow. I did not see any of the officers or men intoxicated on the Katie.

(Signed) THO'S C. BLAKE.

Henry Scott.

The deposition of Henry Scott on behalf of the libellants, taken before Cha's H. Butterfield, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the county and State last aforesaid, on the 2nd day of March, A. D. 1867.

HENRY SCOTT deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. What is your name, age, place of residence, and occupation?

Ans. Henry Scott; I am fifty-four years of age; I reside in
167 Evansville, Indiana, and am a steamboatman by occupation.

Ques. 2. Are you acquainted with the parties to this suit?

Ans. I know Capt. Hazlitt, but am not acquainted with Peter Conrad, the defendant.

Ques. 3. Have you ever seen a steamboat called the Katie? If yea, state about the time you last saw her; where she was lying when you last saw her, and what was her condition?

Ans. The last time I saw her she was lying near Diamond Island, in the Ohio River, about two miles below West Franklin. She was lying on a sand-bar, buried in the sand on one side above her guard. The other guard was above the sand. On her starboard side, out seven or eight feet from her bow-stem, there was a hole broken through her side about six feet long. I cannot tell how deep the hole was, as it was par*t*icular*l*y covered with sand. The timbers in the vicinity of the hole were all shattered to pieces. I don't remember the exact time I last saw her.

(Signed) HENRY SCOTT.

W'm M. Luty.

The deposition of W'm M. Luty on behalf of the libellants, taken before Cha's H. Butterfield, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the
168 county and State last aforesaid, on the 4th day of March, A. D. 1867.

W'M M. LUTY deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. State your name, age, occupation, and place of residence.

Ans. W'm M. Luty; I am thirty-four years of age; I am a pilot by occupation; I reside in M't Vernon, Indiana.

Ques. 2. Are you acquainted with the parties to this suit?

I am acquainted with both parties.

Ques. 3. Have you ever known a steamboat called the "Katie;" do you know what became of her? If yea, please state, and when you last saw her, and where.

Ans. I have known a steamboat called the Katie. The Des Moines run into her and she was thereby sunk. I saw her last lying on the sand near Diamond Island in the Ohio River. I cannot tell exactly when I last saw her, but have seen her several times since she was sunk.

Ques. 4. Do you know who was pilot on the Des Moines at the time of her collision with the Katie? If yea, please state whether he was a regular pilot acting under a regular license, or not, if you know.

Ans. His name was Rob't Dunlop. He was acting pilot of the Des Moines at the time of her collision with the Katie. He was acting without any license for the Ohio River between the mouth of the Cumberland River and Louisville, Kentucky.

169 Ques. 5. Was he licensed for that portion of the Ohio River where the collision occurred?

A. He was not.

Ques. 6. In what portion of the Ohio did the collision occur?

Ans. Between Louisville and the mouth of the Cumberland River, near Diamond Island. I should say about one hundred and ten or twelve miles above the mouth of the Cumberland River.

Ques. 7. Do you know whether or not the said Robert Dunlop was competent to act as pilot in that portion of the Ohio River where the collision occurred? If yea, please state.

Ans. I know that he had no right to act as pilot, and he himself told me that he did not know the river.

(Signed) W. M. LUTY.

Jason Boyce.

The deposition of Jason Boyce on behalf of the libellants, taken before Cha's H. Butterfield, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the county and State last aforesaid, on the 4th day of March, A. D. 1867.

JOSEPH BOYCE deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. What is your name, age, occupation, and place of residence?

Ans. My name is Jason Boyce; I am twenty-three years of age. I am a steamboat mate by occupation, and I reside in Wellsville, Ohio.

Ques. 2. Are you acquainted with the parties to this suit?

170 I am acquainted with Capt. Hazlitt, but I am not acquainted with the defendant.

Ques. 3. Did you ever know a steamboat called the Katie? If yea, please state where and when you last saw her, and what was her condition.

Ans. I did know the steamboat Katie. I have often seen her. I last saw her since she was sunk by the Des Moines. I can't say exactly how long ago it was, but she was lying in the sand near Diamond Island, on the Ohio River. She had been struck right abreast of her capstan, and it appeared that the boat which struck and sunk her had been coming toward her at right angles. The hole which had been broken in her hull was at least six feet in size, and the bow of the boat which had struck her had penetrated directly to the spindle of the capstan, and had bent it.

Ques. 4. Why do you suppose the boat which struck her was coming toward her at right angles?

Ans. From the place in the hull of the Katie made by the boat which struck her, the spindle of the capstan could not have been reached so as to bend it, unless the boat which struck it had been coming at right angles.

Ques. 5. Do you know who was pilot of the Katie at the time she was sunk? If yea, please state.

Ans. I do. His name is Augustus Mellon.

Ques. 7. Are you acquainted with his qualifications as pilot? If yea, please state.

171 Ans. I am acquainted with his qualifications as pilot. I know him to be a No. 1 pilot.

Ques. 8. Do you know who was acting as pilot on the Des Moines at the time of the collision with the Katie?

Ans. Robert Dunlop was acting as pilot of the Des Moines at that time.

Ques. 9. Do you know what *was* his qualifications as a pilot? if yea, please state.

Ans. What I knew of him was as steamboat mate, and I never knew of his having any pretensions to a knowledge of the Ohio River as pilot. He was not a licensed pilot on the Ohio River.

Cross-examined by Cha's E. Marsh, attorney for defendant:

Ques. 1. Where were you at the time the collision occurred between the Katie and the Des Moines?

Ans. I was in Evansville.

Ques. 2. Where was William M. Luty at that time? State if you know.

Ans. He was in Evansville. I saw him here a day or two before the collision. He piloted the Des Moines from Evansville to Louisville, Ky., after the accident.

Ques. 3. State whether or not Luty was ever a pilot on the Katie.

Ans. I cannot say whether he ever was or not on the Katie as a pilot.

Ques. 4. In answering the above questions about William M. Luty, did you understand the questions *in* referring to the same William M. Luty whose depositions is above taken?

Ans. I did.

172 Ques. 5. Are you acquainted with Robert Dunlop yourself?

Ans. I am not acquainted with him. I know him when I see him. If I saw him to-day I would know him; but he does not know me.

Ques. 6. State when and where you first saw him to know him?

Ans. About four years ago—in the latter part of 1862, at Nashville, Tennessee.

Ques. 7. When did you next see him?

Ans. About two or three weeks after I saw him in Nashville, in Louisville, Kentucky.

Ques. 8. When did you next see him?

Ans. I saw him on the Des Moines, at the wheel, when she came into Evansville, soon after the collision with the Katie. I saw him on the wharf also after the boat landed. This was the last time I ever saw him.

Ques. 9. Where were you at the time you saw him at the wheel?

Ans. I was at the City Hotel in Evansville. This hotel is on the wharf in Evansville.

Ques. 10. How do you know that Robert Dunlop was not licensed as a pilot at the time of the collision?

Ans. I heard other pilots say so.

Ques. 11. In your answer to question third, of your examination-in-chief, you say the last time you saw the "Katie" she was lying in the sand near Diamond Island, in the Ohio River. Now state as near as you can, about when this was that you so saw her?

A. I think it was in the latter part of November of 1865.

173 Ques. 12. Was it then that you made the observations in regard to the places where she had been struck?

Ans. Yes, sir.

Ques. 13. State, as nearly as you can, the position in which the hull of the Katie lay when you saw her—whether her head lay up stream or down stream; whether pointed toward the Indiana shore or the Kentucky shore—whether she lay flat upon the sand, or whether one side was tilted up, and if either side was tilted up, which side; and whether or not any part of her was under water, and if so, what part, and what was the stage of the water at the time; and whether the hole in her hull was broken short off at the edges of the hole or wound, or whether the edges of the hole were splintered up, and irregularly broken?

Ans. Her head lay down stream; she was lying pretty nearly straight, if anything, pointing a little toward the island, which would be toward the Kentucky shore. She lay tilted over, her larboard side being at least two feet lower than her starboard. The larboard side was about six inches under water when I left her. The water during the week previous was very low—at that time it was a good boating stage for packets to run. The top planks of her hull were broken short off, but her deck planks were somewhat splintered. She was buried in the sand so that I could not see clear to her bottom. I speak of the planks which I could see.

174 Ques. 14. On which side of her was the hole?

Ans. On the larboard side.

Ques. 15. How do you know that this hole had been made by another boat?

Ans. By what the officers on the Katie had told me, and I had heard other man say so.

Ques. 16. How many conversations have you had with the officers of the Katie about the matter?

Ans. None, except with the second clerk of the Katie, who was boarding at the same hotel with me.

Ques. 17. How do you know that Augustus Mellon was pilot of the Katie at the time of the collision?

Ans. Because I saw him on her when she left Evansville, and I also knew that he had been pilot on her sometime before.

Ques. 18. How do you know Mellon to be a No. 1 pilot?

Ans. Because I have run on the same boat with him. I was mate when he was pilot.

Ques. 19. Did you ever make a trip on the Des Moines?

Ans. I never did.

Ques. 20. How do you know that there ever was a collision between the Des Moines and the Katie?

A. I know the Katie was sunk that night. I also saw the stem of the Des Moines, which was trim'ed of', when she struck her. The officers of the Katie also came upon the Des Moines the morning after the Katie was sunk, and I also heard it by report.

Ques. 21. How do you know the Katie was sunk that night?

Ans. I went down to the wharf as soon as the Des Moines
175 came in. The crew of the Katie, which was on the Des Moines, and the crew of the Des Moines, the soldiers *which* were on the Des Moines, and the passengers said that the Katie was sunk that night.

Ques. 22. Did you have any conversation with the officers of the Des Moines at any time after the Des Moines came in?

Ans. Yes; I had a conversation with the carpenter of the Des Moines. I was not acquainted with him; some one else was talking with him, and I stopped and asked him a few questions about it.

Ques. 23. How long have you resided in Wellsville, Ohio?

Ans. I staid there until I was large enough to go on the river. I now go home occasionally. I was born there. I have been steamboating from this place for the last four years.

Re-examined by Morris S. Johnson, pl'ffs' att'y.

Ques. 1. As the Katie lay where you last saw her, was the hole which you have described in the side toward the Kentucky shore, or on the side toward the Indiana shore?

Ans. It was on the side toward the Kentucky shore.

Ques. 2. Was there any other break in the Katie other than the one you have described above, so far as you know?

Ans. I saw no other.

(Signed) JASON BOYCE.

176 *Allen J. Duncan.*

The deposition of Allen J. Duncan, on behalf of the libellants, taken before Cha's H. Butterfield, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the county and State last aforesaid, on the 5th day of March, A. D. 1867.

ALLEN J. DUNCAN deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

Ques. 1. What is your name, age, occupation, and place of residence?

Ans. My name is Allen J. Duncan; I am thirty-seven years of age; I am by occupation a steamboat commander, steamboat pilot, and steamboat engineer; I reside in Evansville, Indiana.

Ques. 2. Do you know anything of a steamboat called the Katie? if yea, please state when and where was she when you last saw her.

Ans. I have seen her often; she used to run from here to Nashville.

The last time I saw her she was lying sunk near Diamond Island, on the Ohio River. I cannot recollect the date I last saw her.

Ques. 3. Do you know how she came to be sunk? if yea, please state.

Ans. The Des Moines ran into her and sunk her.

Ques. 4. Do you know who was pilot on the Des Moines at the time the Katie was sunk, and who was pilot on the Katie at the same time? if yea, please state.

Ans. Rob't Dunlop was pilot on the Des Moines, and Augustus Mellon was pilot on the Katie.

177 Ques. 5. Do you know the character and competency of Rob't Dunlop as pilot on the Ohio River? if yea, please state whether or not he was a competent pilot in the Ohio River, and please state, if you know, whether he was or was not a licensed pilot in the Ohio River.

Ans. I know nothing of his piloting in the Ohio River, only I know that he stated to me that he was not a licensed pilot in the Ohio River.

Ques. 6. Are you acquainted with Augustus Mellon and with his qualifications as pilot? if yea, please state what these qualifications are, and how you know.

Ans. I am acquainted with him and with his qualifications as a pilot. He is a good pilot. I know because I have steamboated with him now and again, and have had him employed on my boat. He did as good work for me as I ever had done by any man.

Ques. 7. Do you know for what port the Des Moines left Evansville on her trip up after the accident occurred?

Ans. She was going to Louisville, according to my understanding.

Ques. 8. Do you know what pilot took the Des Moines from Evansville up the river after the accident occurred? if yea, please state.

Ans. I don't know.

Ques. 9. Do you know whether Rob't Dunlop remained on the Des Moines as pilot after she reached Evansville on that trip? if yea, please state.

Ans. I don't know whether he did or not.

178 Cross examination by Chas. E. Marsh, deft's attorney:

Ques. 1. How far below West Franklin did the collision between Katie and the Des Moines occur?

Ans. I suppose it to be about a mile or a mile and a quarter. I mean to where the wreck lays; I don't know exactly where they struck.

Ques. 2. Are you well acquainted with the channel of the Ohio River from Evansville to Cairo?

Ans. I am tolerably well acquainted with it.

Ques. 3. How long, if at all, have you run in that trade?

Ans. Between eight *or* nine years; I have been steamboating on the Ohio for nearly twenty-one years.

Ques. 4. What stage of water was there in the Ohio River from Evansville to Cairo in the latter part of November in the year eighteen hundred and sixty-four? state, if you know.

(Question objected to by pl'ffs' attorney because it relates to new matter not heretofore inquired about.)

Ans. I do not remember the exact stage of the water, it is so long ago. My opinion is that it was a pretty fair stage of water. The Des Moines was a pretty large boat and could not have run unless there had been a tolerably fair stage of water.

Ques. 5. Would a good pilot, if he had been perfectly sober and in his right senses, at that stage of water in descending the river at West Franklin, have crawled round the point or bend at West Franklin or

a little below there, or would he instead have kept his boat out
179 near the middle of the channel?

(Question 5 objected to by pl'ffs' attorney.)

Ans. The channel is very close to shore there. The middle of the channel down around the point is very near the shore. You can run about around the point and bend so near the shore that a man could jump ashore. Down stream boats always run near the shore when the water is low. The channel is there whether the water is high or low. I think a good pilot would have kept down that side.

Ques. 6. Do good pilots in running that part of the river when the water is at a good stage, keep as close to the shore as you speak of in going round that bend?

(Objected to by pl'ffs' att'y.)

Ans. I don't know as it would be necessary to run that close. If the water was high you could run down on the other side of the island when you have a mind to. The channel, however, is as I have described it. I have run it a great many times and when the water is at a medium stage or low I always run around the bend near the shore.

Ques. 7. How far below the point does the channel run close to the shore?

(Ques. 7 objected to by pl'ffs' attorney.)

Ans. About three or four hundred yards.

Ques. 8 Does it run close to the shore down as far as the trees on the bank below the bend?

180 (Ques. 8 objected to by pl'ffs' attorney.)

Ans. Not quite down to the timber.

Ques. 9. Does not Augustus Mellon have the reputation of sometimes being under the influence of liquor?

(Ques. 9 objected to by pl'ffs' attorney.)

Ans. I never saw him that way when he had work to do.

Ques. 10. Was not the Katie incompletely equipped and manned at the time of the accident?

(Objected to by pl'ffs' att'y.)

Ans. I do not know.

Ques. 11. Did you see the collision between the Katie and the Des Moines, of which you have spoken?

Ans. I did not.

Ques. 12. Were you on board either boat at the time?

Ans. I was not.

Ques. 13. Which boat drew the most water of the two?

Ans. The Katie was the lightest boat.

Ques. 14. How do you know that the Des Moines ran into the Katie instead of the Katie running into the Des Moines?

Ans. The officer stated to me that the Des Moines ran into the Katie.

Ques. 15. The officers of which boat stated that to you?

Ans. The officers of the Katie.

Ques. 16. How do you know that Robert Dunlop was pilot on the Des Moines at the time of the collision?

Ans. Because he told me so himself.

Ques 17. How do you know that Augustus Mellon was at that time piloting the Katie?

Ans. He told me that he was at the wheel at the time of the
181 collision. I know he was on the boat because I saw him on the Katie when she left here.

Ques. 18. In what condition was the hull of the Katie, and where lying when you saw her just after the collision?

Ans. Lying quartering down stream, her head rather toward the island.

Ques. 19. Was she lying in the same condition when you last saw her?

Ans. Pretty much the same fix. I think probably her stern had washed down a little by the sand washing away under it.

Ques. 20. Has she lain in about this condition since the accident?

Ans. Something near the same condition.

(Signed) A. J. DUNCAN.

Ja's A. Damron.

The deposition of James A. Damron on behalf of the libellants, taken before Charles H. Butterfield, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the county and State last aforesaid, on the 11th day of March, A. D. 1867.

JAMES A. DAMRON deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. What is your name, age, occupation, and place of residence?

Ans. My name is James A. Damron. I am twenty-nine years of age. I am a steamboat pilot by occupation, and I reside in Evansville, Indiana.

182 Ques. 2. Have you ever heard of a steamboat called the Katie? if yea, please state, and if you know, please state what became of her.

Ans. I have known a steamboat called the Katie and I was running on her as pilot at the time she was sunk. She was sunk by the steamer Des Moines. I do not now remember just when it occurred. She was sunk at or near Diamond Island in the Ohio River.

Ques. 3. Do you know who was pilot of the Des Moines at the time the accident occurred? if yea, please state.

Ans. I do know who was the pilot on the Des Moines. His name was Robert Dunlop; at least I have his word that he was at the wheel when the accident occurred, and I saw him on the Des Moines immediately after it occurred.

Ques. 4. Are you acquainted with the character and qualifications of Robert Dunlop as a pilot in the Ohio River?

Ans. That was the first boat I ever knew him to take the responsibility of piloting above the mouth of the Cumberland River in the Ohio River. He himself told me that he was not a licensed pilot in that part of the river above the mouth of the Cumberland River. I have known him a long time and I have never known him to have any experience as a pilot in the Ohio River above the mouth of the Cumberland, and therefore do not think he could have been a competent pilot in that part of the river.

Ques. 5. In what directions were the Des Moines & the Katie
183 going when the latter was sunk?

Ans. The Des Moines was ascending, and the Katie descending the river.

Ques 6. On which side was the Katie struck?

Ans. On the starboard side.

Ques. 7. How many pilots were upon the Katie at the time? please state, if you know; and what was their name or names?

Ans. There were two—Augustus Mellon and myself.

Ques. 8. Which pilot was at the wheel at the time the Katie was sunk? if you know, please state.

Ans. Augustus Mellon, my partner, was on watch at the time.

Ques. 9. Are you acquainted with the character of Augustus Mellon for competency as pilot on the Ohio River? If yea, please state.

Ans. I am; I consider him a good pilot.

Ques. 10. What was the condition of the Katie, as regards her equipments, head lights, &c., at the time she was sunk?

Ans. So far as I know, she was running fully equipped according to the law; if there was any deficiency I do not know it; she was running with her head lights up; by the term head lights I mean signal lights; I noticed signal lights burning when I came out of the pilot-house just before going to bed that night.

Ques. 10. What time did you go to bed that night?

Ans. Along between seven and eight o'clock.

184 Ques. 12. What was the stage of water in the Ohio River at that time; was it high or low?

Ans. The water was tolerably high at that time; it was at the stage which we considered a shore-running stage for boats of our size.

Ques. 13. Will you explain what you mean by the phrase "shore-running stage," and also state the relative size of the two boats, if you know it?

Ans. What I mean by a shore-running stage is, the river was high enough for an ascending boat to run the shores if the pilots desired it; as to the size and tonnage of the Des Moines, I do not know much; I suppose she was a six or seven-hundred-ton boat; the Katie, I suppose, was about a two hundred and fifty or three-hundred-ton boat.

Ques. 14. Which boat drew the most water?

Ans. The Des Moines would draw more than the Katie. At the time the collision occurred we might have been drawing more water than the Des Moines, as we had a cargo on, being going down river. The Des Moines had no freight on, but had, as I have heard some one say, a part of a regiment of soldiers on board—how many I don't know—but both boats being light, the Des Moines would draw the most water; I know the Des Moines had some soldiers aboard, because I saw them.

Ques. 15. What was the position of the Katie in the river—how far from the Indiana shore at the time she was sunk—I mean at the time the collision occurred?

185 Ans. As near as I can guess, I suppose we were about in the neighborhood of two hundred yards from the Indiana shore at the time the collision occurred.

Ques. 16. How long after the collision did you see the position of the boat?

Ans. Just as soon as I could get up, put on my boots, and run out forward; I had been to bed with my pants on.

Ques. 17. In that stage of water what would be the proper position of the Katie in describing the river?

Ans. In that stage of the water I think she was about the proper distance from the shore; at that stage of water it was not necessary for us to run the channel. The reason why it was not necessary for us to run the channel was because the water was high enough to run any where. It was a high stage of water.

Ques. 18. From the direction of which shore, the Indiana or Kentucky shore, was the Des Moines coming at the time the collision occurred?

Ans. She must have been coming from the Indiana shore, from the way the collision occurred; that is my idea about it.

Ja's A. Damron.—(Continuation.)

The further deposition of James A. Damron, on behalf of the libellants, taken before Charles H. Batterfield, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the county and State last aforesaid, on the 16th day of March, A. D. 1867.

JAMES A. DAMRON, in continuation of his deposition commenced on the 11th day of March, A. D. 1867, further deposeth and saith, in
186 answer to interrogatories and cross-interrogatories as follows, viz:

Ques. 19. How do you determine as to the shore, from the direction of which she was coming?

Ans. Just before the collision occurred, I heard the signal of a boat which must have been coming up stream, and they were answered by the Katie. The collision occurred immediately afterwards. The signals which were given by the boat which blew first, were the signals given by the boat which was coming up stream, and she blew to keep upon the left, or the Indiana shore, and the signals were answered by the Katie.

Ques. 20. Did you afterward ascertain what boat it was which was coming up stream, and which gave the signals first? if yea, please state, and also state how many signals said boat gave.

Ans. I did not ascertain what boat it was which gave the signals first until after the collison had occurred, and she had backed away from us some distance, and then came alongside of us. I then ascertained which boat it was which ran into us, and which must have given the signals first, because there was no other boat in sight which I could see at the time; it was the Des Moines, and she gave two signals.

Ques. 21. When two signals are given by a boat ascending the river, what does it indicate as to the side which said boat ascending the river intends to keep in case of meeting a boat?

Ans. It indicates that she wants to keep to the left.

187 Ques. 22. In reply to those signals of the Des Moines, how many signals did the Katie give, and what does that indicate as to the side which the descending boat intends to keep in meeting another boat?

Ans. She gave two, which was the proper answer to the signal given by the Des Moines, and which indicated that she intended to give to the Des Moines the Indiana side.

Ques. 23. How long after the signal of the Des Moines was it that the collision took place?

Ans. I don't know exactly how long it was, but the collison took place just about as quick as the two boats could come together after giving the signals at the proper distance.

Cross-examination by Cha's E. Marsh, counsel for defendant.

Ques. 1. How long have you been a steamboat pilot?

Ans. I have been a licensed pilot in the neighborhood of five (5) years.

Ques. 2. Are you acquainted with the Ohio River from Evansville to Cairo?

Ans. I am, sir.

Ques. 3. Have you any experience in steamboat collisions while boats are pursuing the course of their voyages?

Ans. I cannot say that I have had any experience, never having had any collisions myself.

Ques. 4. How many, if any, steamboat collisions did you ever actually witness yourself?

Ans. I do not remember to have actually witnessed any except
188 the one above-mentioned, when two boats were going in opposite directions; and I can't say that I actually witnessed this—not seeing the other boat until after the collision occurred.

Ques. 5. When you speak of a skil'ful pilot, do you mean one who knows how to run a boat, and at the same time never gets drunk, or do you simply mean one who understands piloting, without reference to getting drunk?

Ans. When I speak of a skil'ful pilot, I mean one that knows the river where his license grants him to pilot, and one that knows how to manage a steamboat, and understands his business generally. In regard to getting drunk, as good pilots as we have on the western waters will sometimes get drunk in port.

Ques. 6. Do you know whether or not Mellon, the pilot of the Katie, on watch (at the time of the collision) had been drinking any during that day or not before you went to bed?

(Ques. objected to by pl'ffs' att'y.)

Ans. Well, I don't know whether he had been drinking to any extent during the day, but I don't think he had, because he appeared to be perfectly sober when he came on watch after supper. I was with him in the pilot-house after I ate my supper, and he still appeared to be all right.

Ques. 7. What is your opinion as to whether he had been drinking any intoxicating drink on that night?

(Ques. 7. Objected to by pl'ffs' att'y.)

Ans. I don't think he had drank any to any excess up to the
189 time I left him in the pilot-house after I had been up to see him after supper; whether he drank any after that, I can't say.

Ques. 8. From his appearance and actions after the collision state whether you do not think he had been, during the night, drinking to such an extent that it was not quite prudent for him to be at the wheel at the time of the collision?

(Ques. 8 objected to by pl'ffs' att'y.)

Ans. If I may be allowed to judge from his appearance and actions, after the collision, I don't think he had indulged in whiskey to such an extent as to make it unsafe for him to stand at his watch.

Ques. 9. If a pilot, running as your partner, running on the same boat with you, both of you piloting the boat at alternate watches, should drink so much as to render it unsafe for him to stand at the wheel, would you not be very unwilling to testify about it?

(Ques. 9 objected to by pl'ffs' att'y.)

Ans. In a case of this kind I can't say that I would be altogether unwilling to testify that he was drunk in case that he was drunk; because in a case of this kind there was the lives of people at stake; and I think if a pilot would get so drunk as not to be capable of managing a boat, and endangering the lives of people, I think he ought to be informed on?

Ques. 11. Were not the signal lights on the Katie on the night of the collision hanging under the hurricane roof between the derricks?

Ans. They were.

190 Ques. 12. Were you awake or asleep just before the collision?

Ans. I was awake for I had not been asleep up to the time of the collision.

Ques. 13. When you first got up and come out of your room, in what direction was the Katie's bow headed or pointed?

Ans. Quartering toward the Kentucky shore or Diamond Island as it proved to be afterwards—for I did not know exactly where I was when I first got up.

Ques. 14. Were not both boats headed at this time *headed* toward Diamond Island?

Ans. When I got up and went out, the Des Moines had backed away from us—she was still headed toward the Katie; the Katie's head was still quartering toward the Diamond Island shore.

Ques. 15. How far from the Katie was the Des Moines at this time?

Ans. In the neighborhood of one hundred and fifty (150) or two hundred (200) yards.

Ques. 16. You state that the Des Moines at the time was headed towards *toward* the Katie, was not the Des Moines at the same time, also headed partly in the direction of Diamond Island?

Ans. That would throw her head partly toward Diamond Island or the Kentucky shore.

Ques. 17. Do you mean that the Des Moines thus lay with her heard toward the Kentucky shore at this time?

Ans. Yes.

191 Ques. 18. State whether the plat, marked "Exhibit A," and now shown you as a part of this cross-question, does not indicate under the word "boats" nearly or quite the position of the Katie and Des Moines at the time when you first came from your room after the collision; that is, when you first came out and first noticed the position of the Des Moines, did not both boats then, or at about that time, stand with their bows about in the direction of the arrows Y & Z—Y indicating the direction of the Des Moines, and Z indicating the direction of the Katie?

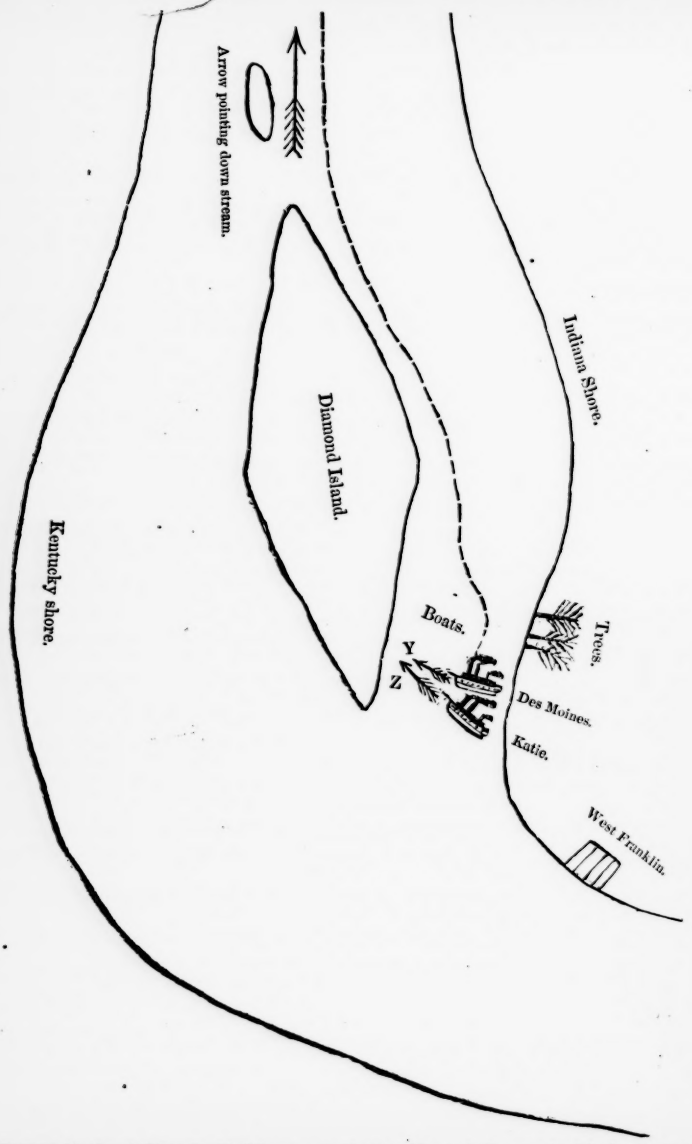


EXHIBIT A and part of Question 18 of the cross-examination of James A. Dameron by defendant's counsel, said cross-question being in these words, to wit: "State whether or not the plat marked 'Exhibit A' and now shown you as a part of this cross-question does not indicate under the word 'boats' nearly or quite the position of the Katy & Des Moines at the time when you first came from your room after the collision, that is when you first came out and first noticed the position of the Des Moines did not both boats then or about that time stand with their bows about in the directions of the arrows Y & Z—Y indicating the Des Moines and Z indicating the direction of the Katie."

Exhibit A referred to in question No. 18 cross-examination of Ja's A. Damron.

(Signed) CHA'S H. BATTERFIELD, *Notary Public.*

(Ques. 18 objected to by pl'ffs' att'y.)

Ans. In the first place I don't consider this a correct plat of the shape of the river above Diamond Island—from the head of—as far as the plat exhibits above West Franklin. The arrows marked Y & Z, do not indicate the exact position of the two boats after they had separated after the collision. The steamer Katie was pointing quartering toward Diamond Island, or rather, I should say, quartering down stream toward Diamond Island. The steamer Des Moines was pointing toward Diamond Island or the Kentucky shore with her head quartering up stream.

Ques. 19. Was not the position of the Des Moines, a very short time after you came out of your room, very nearly that indicated in the said plat?

Ans. No, sir.

Ques. 20. Did not her head, after you come out of your room,
192 swing round squarely toward the Kentucky shore or Diamond Island?

Ans. Her head never swung round squarely until she got nearly along side of us, coming to us after the collision.

Ques. 21. You say, in answer to question 19, that the plat does not indicate the position of the Des Moines soon after you come out of your room; now state if by that you mean that the plats represent the Des Moines as heading too much toward the Kentucky shore?

Ans. I mean by that, that it represents her pointing too squarely toward the Kentucky shore, and also, according to the plat, it has her to' near the distance from shore that the Katie was—I would have said too near the same distance from the Indiana shore.

Ques. 22. Did the bell for the Katie to stop ring before the collision?

Ans. I do not recollect of hearing it ring.

Ques. 23. Would not you or any sober pilot who understood his business have rung the bell to stop, and, backing her, to back the boat if you or he had seen a boat coming toward you in such a manner that the coming boat would run into you near your bows if you kept ahead?

(Ques. 23 objected to by pl'ffs' att'y.)

Ans. I would have been governed by circumstances; if I had thought that I could have kept out of her way by still keeping ahead, in
193 all probability I would not stop—if I had seen that a collision was inevitable, I would have stopped and commenced backing.

Ques. 24. Was not the wheel of the Katie going ahead at the time of the collision, and did it not continue to go for some little time afterwards?

Ans. I could not state which way the wheel was going after the collision. I think my partner tried to run her ashore.

Ques. 25. Was not the Katie under full headway, going ahead, when you come out of your room, after the collision?

Ans. I do not think she was; I think her headway had right smartly run out.

Ques. 26. Was she going forward?

Ans. She might probably have had a little headway on her. Of course she was going forward; the strong current at that time would have a tendency to carry her down the river.

Ques. 27. Was or not the Des Moines, at this time, backing on her wheels, at the time you came out of your room?

Ans. It would be impossible for me to state whether she was backing or coming ahead on either wheel, it being after night, and I was not able to see her wheels.

Ques. 28. Was she not, then, moving away from the Katie?

Ans. She must have been going away, for the distance appeared to be increasing.

Ques. 29. If two boats should come into collision, at or near
194 their bows, striking each other a glancing or partly side blow, the one backing on her wheel at the time, and not under full headway, and ascending a current, and the other coming down stream, under full headway, would not the boat coming down stream, and having steerage way, be, by the collision, the least changed in her course, of the two boats, and would not the down-stream boat be likely to knock the bow of the other boat round cross-wise of the river or channel?

(Ques. 29 objected to by pl'ffs' att'y.)

Ans. That would be owing to the way the collision took place. If it was a side or glancing blow, the down-stream boat might be thrown a little out of her course; but this would depend upon the size of the boats, and also upon their loads, because a loaded boat would put a light boat out of the way easier than a light boat would a loaded one.

Ques 30. If a down-stream boat, under full headway, should come into collision with an up-stream boat, not under full headway, catching the up-stream boat on either beam, (near the bows,) would not the up-stream boat be turned round toward the direction that the down-stream boat was going?

Ans. It might have a tendency to throw the up-stream boat somewhat out of the direct course she was pursuing. It would take a tremendous collision to knock a boat from head up stream to head down stream.

195 Ques. 31. Would it take such a tremendous collision if the up-stream boat was struck on the side of her bows by a nearly square blow, but somewhat pointing down stream?

Ans. It would take a square lick to do it, and then I don't believe it would do it; it would cut a boat in two before it would do it. I don't believe either boat could stand it.

Ques. 32. Would this be so if the up-stream boat was backing and moving down stream?

Ans. It would not be the case, for this would have a tendency to make the collision lighter.

Ques. 33. About how wide was the river from the Indiana shore to the shore of Diamond Island, at the time of the collision?

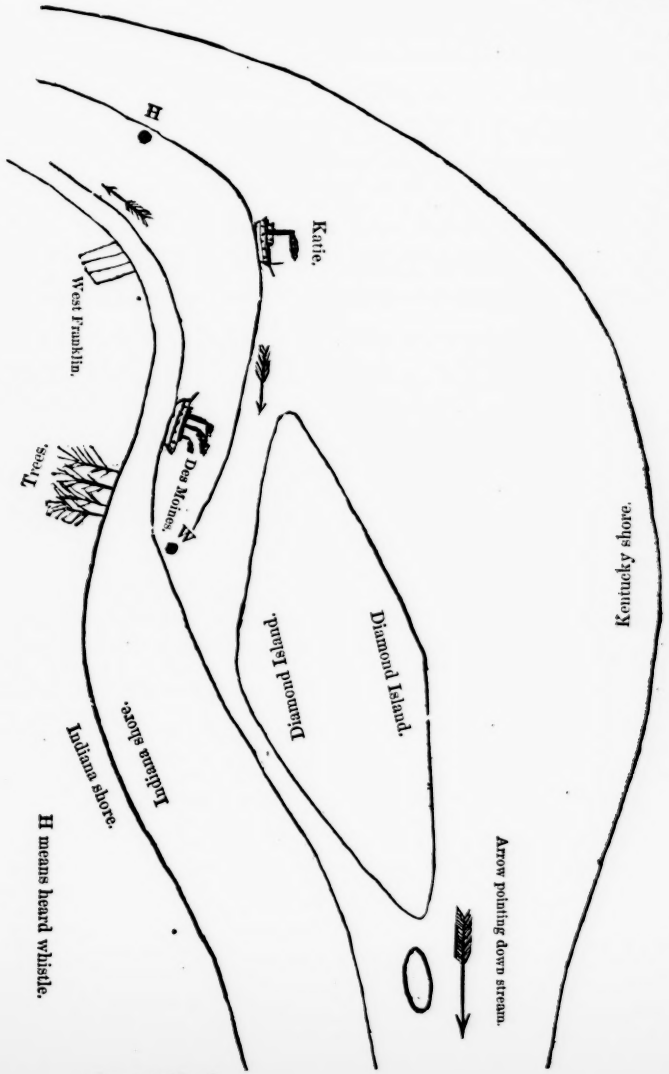
Ans. I do not know the exact width; it was from a quarter to half a mile wide, I suppose.

Ques. 34. Will you please look at another plat, marked Exhibit "B," which I make a part of this question, and state whether if the Katie, on the night of the collision, had been going in the course or track indicated by the dark line behind the place marked Katie, and the blue and red line in front of that place, as shown by the arrow, (which line is intended to represent about the middle of the river at H;) and if the Des Moines had been ascending near the Indiana shore, in the course or track indicated by the dark line behind the place marked Des
196 Moines, and the blue and red mark in front of that place, as shown by the arrow; and if the Des Moines, while at or near W, had sounded her whistle twice while the Katie was at or near H, (H being near the middle of the river a little above West Franklin,) and if both boats, after the whistle of the Des Moines, had kept in the track or course up to the points—one marked "Des Moines," and the other "Katie"—indicated on the said plat "Exhibit B," would there then have been, after the boats had reached said points, the least danger from a

collision, if the night was a clear starlight one, even if one of the pilots had been inexperienced?

EXHIBIT B, and made a part of question 34 by the counsel for the defendant in the cross-examination of James A. Damron.

(Signed) CHA'S H. BATTERFIELD,
Notary Public.



(Question 34 objected to by pl'ffs' att'y.)

Ans. From the position of the two boats, as laid down on the plat, I think there would still be some danger of a collision. If both boats had not kept the directions indicated on the plat, after the signals are given and answered at the proper time and distance, there is still a probability that there will be a collision, if the boats don't keep the course which they signal for.

Question 35. After two boats have come in sight and have arrived at the position indicated on said plat, Exhibit "B," can you say that afterwards there would be any danger of a collision, or that both boats would not be likely to keep the course indicated, to such an extent as would avoid a collision, if both pilots were sober?

197 (Ques. 35 objected to by pl'ffs' att'y.)

Ans. There would be danger of a collision if both boats did not keep the course signalled for. I cannot say whether both boats would keep the course indicated or not. If they had kept the proper course, as signalled for and laid down in the plat, I don't think there would have been a collision, but from the distance the Katie was from the Indiana shore at the time of the collision, I don't think the Des Moines kept the course that she signalled for.

Ques. 36. But if the Des Moines had kept the course as laid down in the map or plat, Exhibit "B," would not the collision have been the fault of the Katie?

(Ques objected to by pl'ffs' att'y.)

Ans. If the Des Moines had kept the course as indicated, as laid down on the plat, after the signals had been given and answered, and from the position of the Katie, as laid down on the plat, I think, then, the fault would have been with the Katie, for from the course laid down on the plat the Des Moines should have kept close up the Indiana shore.

Ques. 37. You will please look at another plat, marked Exhibit "C," which I make a part of this question. On that exhibit the figure or drawing at "S," is intended to represent a boat going up stream from the directions of the arrows behind it, and the figure, or drawing

198 at "T," is intended to represent a boat going down stream from the direction of the arrows behind it. Now, if the ascending boat, at the figure "S," was backing on her wheels, and not under much, if any, headway, and the descending boat at "T" was under full headway, and while under such headway should collide with the ascending boat, in the manner indicated on the plat, do you not think that the ascending boat would be caught by the head and wheeled around, immediately after the collision, somewhat in the position indicated by the figure indicated on said plat by "Des Moines," and point with her bows somewhat in the direction of the arrow "U," and finally point down stream unless checked by her wheels; and do you not think that the descending boat would be also turned somewhat out of her course, and stand with her bows in somewhat the position marked "Katie," somewhat in the direction of the arrow V, with her bows toward the island?

(Ques. 37 objected to by pl'ffs' att'y.)

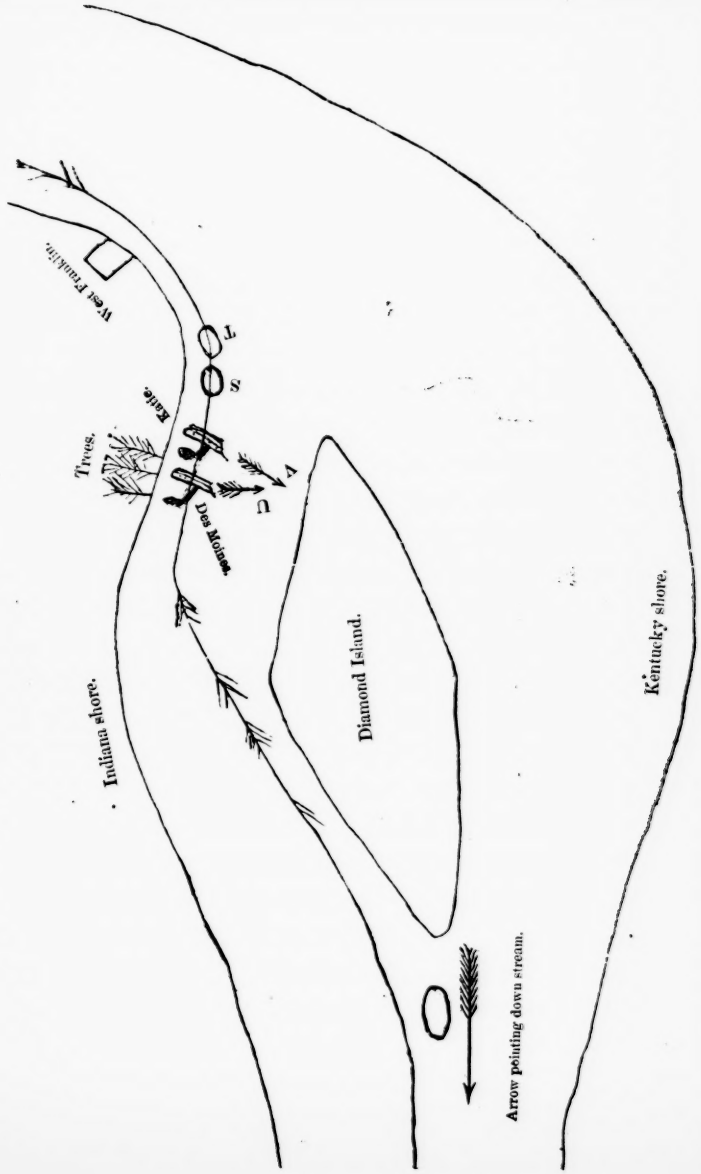

West Franklin.
Battle
Trees.
Des Moines.
T
S
A
U
Indiana shore.
Diamond Island.
Kentucky shore.
Arrow pointing down stream.

EXHIBIT "C," referred to in, and made a part of, question 37 in the cross-examination by defendant's counsel, of James A. Damron.

(Signed) CHA'S H. BATTERFIELD,
Notary Public.

Ans. Boats coming together in the position indicated on the plat, and the heading of the ascending boat being nearly rnn out, and the descending boat still under full headway, should hit the ascending boat on her larboard bow, it would have a tendency to knock the *descending* boat somewhat out of her course, but not so much as indicated on the plat; at the same time it might have a tendency to knock the
199 descending boat somewhat out of her course, but I could not say whether it would be the course indicated on the plat or not. The descending boat might probably have a tendency to glance to the right; it would probably depend upon which way her stern was swinging at the time of the collision. If the stern of the descending boat should be swinging toward the Indiana shore at the time of the collision, she might probably glance off to the left, somewhat in the position indicated on the plat, and hitting the ascending boat on her larboard bow, it would have a tendency to knock her in the direction indicated on the plat, and the headway of the descending boat might shove the ascending boat clear round.

Ques. 38. How long after the collision before the Katie sunk?

Ans. I suppose somewhere from ten to fifteen minutes.

Reëxamination:

Ques. 1. Nearest to which shore was the Katie when the collision occurred, that of Diamond Island or the Indiana shore? Please state, as nearly as you can, how far she was from the Indiana shore when the collision occurred.

Ans. At the time I first went out, I think she must have been nearly in the middle of the river, between Diamond Island and the Indiana shore—if anything, perhaps a little nearest to the Indiana shore;
200 as near as I can guess, it being after night, she was in the neighborhood of two hundred (200) or two hundred and fifty (250) yards from the Indiana shore, I think.

Ques. 2. In what part of the Katie was she struck in that collision, and what part of the Des Moines came in contact with her?

Ans. The Katie was struck somewhere, I should think, about the after-side chock, on her starboard bow, in the neighborhood of ten or fifteen feet from her bow-stem, and I think it must have been the Des Moines bow which struck her.

(Signed) JAMES A. DAMRON.

A. G. Sullivan.

The deposition of Archibald G. Sullivan, on behalf of the libellants, taken before Cha's H. Batterfield, esquire, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the county and State last aforesaid on the 6th day of March, A. D. 1867.

ARCHIBALD G. SULLIVAN deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. What is your name, age, and place of residence?

Ans. My name is Archibald G. Sullivan; I am forty-one years of age; I reside in Evansville, Indiana.

Ques. 2. Did you ever know a steamboat called the Katie?

Ans. Yes, sir; I have seen the boat frequently.

Ques. 3. State, if you know, what become of the Katie, and
201 when and where you last saw her.

Ans. I don't know, of my own knowledge, what became of her; I only know by report. When I last saw her she was lying at the wharf in Evansville.

(Signed) A. G. SULLIVAN.

F. R. Huston.

The deposition of Frederick R. Huston, on behalf of the libellants, taken before Cha's H. Batterfield, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the county and State last aforesaid, on the 7th day of March, A. D. 1867.

FREDERICK R. HUSTON deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. What is your name, age, occupation, and place of residence?

Ans. Frederick R. Huston. I am thirty-two years of age. I am a steamboatman by occupation. I reside in Evansville, Indiana.

Ques. 2. Do you know anything of a steamboat called the Katie? if yea, please state, and also, what became of her, if you know.

Ans. I know there was such an one. I know that she was sunk, because I saw her after she was sunk; but how she was sunk, I only know from hearsay.

(Signed) FRED. R. HUSTON.

Ja's R. Lotspeich.

The deposition of James R. Lotspeich, on behalf of the libellants,
202 taken before Cha's H. Batterfield, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the county and State aforesaid, on the 8th day of March, A. D. 1867.

JAMES. R. LOTSPEICH deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. What is your name, age, and place of residence?

Ans. My name is James R. Lotspeich. I am thirty-one years of age, and I reside in Evansville, Indiana.

Ques. 2. Do you know anything of a steamboat called the Katie? if yea, please state, and also, what became of her, if you know.

Ans. I have heard of the steamboat Katie, but I have forgotten, if I ever knew what became of her.

(Signed) J. R. LOTSPEICH.

D. E. Watkins.

The deposition of David E. Watkins, in behalf of the libellants, taken before Cha's H. Batterfield, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the county and State last aforesaid, on the 9th day of March, A. D. 1867.

DAVID E. WATKINS deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. What is your name, age, and place of residence?

Ans. My name is David E. Watkins. I am thirty-three years of
203 age, and I reside in Evansville, Indiana.

Ques. 2. Did you ever know a steamboat called the Katie? if yea, please state what you know about her, and also, what became of her, if you know.

Ans. I have heard of a steamboat called the Katie. All I know as to what became of her, is merely what I have heard.

(Signed) DAVID E. WATKINS.

W'm A. Forth.

The deposition of William A. Forth, on behalf of the libellants, taken before Cha's H. Batterfield, esquire, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the county and State last aforesaid, on the 12th day of March, A. D. 1867.

WILLIAM A. FORTH deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. What is your name, age, and place of residence?

Ans. William A. Forth. I am thirty-five years of age, and I reside in Evansville, Indiana.

Ques. 2. Do you know anything of a steamboat called the Katie, and what became of her? if yea, please state.

Ans. I do know such a steamboat. I have seen her, but I do not know what became of her, except as I have been told.

(Signed) W'M A. FORTH.

J. A. Jewett.

The deposition of Joseph A. Jewett, on behalf of the libellants,
204 taken before Cha's H. Batterfield, esquire, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of Evansville, in the county and State last aforesaid, on the 13th day of March, A. D. 1867.

JOSEPH A. JEWETT deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. What is your name, age, and place of residence?

Ans. My name is Joseph A. Jewett. I am *am* twenty-six years of age, and I reside in Evansville, Indiana.

Ques. 2. Did you ever know a steamboat called the Katie?

Ans. I have. I have seen her often.

Ques. 3. Do you know what became of her? if yea, please state.

Ans. She was sunk, I think, in the Ohio River, above the mouth of the Cumberland River.

Ques. Do you know the boat that sunk the Katie? if yea, please state.

Ans. No; I do not. It was so long ago, that I have forgotten all I knew about . In fact I never knew anything about it, except what I heard.

(Signed) JOSEPH A. JEWETT.

Ferd. Weil.

The deposition of Ferdinand Weil, on behalf of the libellants, taken before Cha's Batterfield, esquire, a notary public in and for the county of Vanderburgh, in the State of Indiana, at the city of
205 Evansville, in the county and State last aforesaid, on the 14th day of March, A. D. 1867.

FERDINAND WEIL deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. What is your name, and place of residence?

Ans. Ferdinand Weil. I reside in Evansville, Indiana.

Ques. 2. Do you know anything of a steamboat called the Katie? if yea, please state what became of her.

Ans. I have known of a steamboat of that name, but I know nothing of what became of her, except what I have heard.

(Signed) F. WEIL.

L. Ruffner, jr.

The deposition of Lewis Ruffner, jr., on behalf of the libellants, taken before Cha's H. Batterfield, esquire, a notary public, in and for the county of Vanderburgh, in the State af Indiana, at the city of Evansville, in the city and State last aforesaid, on the 15th day of March, A. D. 1867.

LEWIS RUFFNER, Jr., deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1. What is your name, age, and place of residence?

Ans. My name is Lewis Ruffner, jr. I am twenty-nine years of age, and I reside in Evansville, Indiana.

Ques. 2. Do you know anything of a steamboat called the
206 Katie? if yea, please state, and also, state if you know what became of her.

Ans. I do know of a steamboat called the Katie. I have seen her wreck since. She was sunk, but how she came to sink or be sunk, I know nothing except what I have heard.

(Signed) L. RUFFNER, JR.

207 DEPOSITIONS ON PART OF RESPONDENT.

Depositions for the respondent read upon the hearing of the cause.

Tho's W. Singer.

The deposition of Thomas W. Singer, on behalf of the respondent, taken before Sam'l C. Davis, jr., esquire, a notary public within and for the county of St. Louis, in the State of Missouri, at the city of St. Louis, in the eastern district of Missouri, on the 30th day of March, A. D. 1866.

THOMAS W. SINGER, of lawful age, deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

I live at St. Louis; am a steamboat clerk; I am thirty years of age.

1st int. What boat are you on?

Ans. The Peter Balen.

2nd. What boat were you on in November, 1864?

Ans. Clerk of Des Moines. I had been on her a month and a half prior to the collision.

3rd. Where had she been running?

Ans. She had been running from Cairo to Nashville, towing barges. She was chartered for that purpose by A. C. Wrolfolk, quartermaster at Cairo.

4th. State where she was when she was ordered to take these troops on board.

Ans. She was at Cairo, and ordered to go to Nashville, and come back to Cairo. At Nashville the quartermaster ordered us to take in a lot of troops for Louisville. I told him we could not go there, for we had to go back to Cairo. He said it was a case of emergency, and he could not get along without us, and we would have to go. He put the troops on board, and started us down the river. When we got to Smithland, I went up to quartermaster, and reported we had no pilot to go up
208 the river. The quartermaster at Smithland was Capt. H. Raison. I told him we had no pilots to go up the Ohio River, as both of our pilots were licensed to Cairo, and could not take us up the Ohio. I told him to get us another pilot. He sent his young man with me to go round Smithland to see if we could get a pilot; could find none, and returned to quartermaster, and told us to do the best we could; and if we could get no men with a license, to get one who knew the river, and to go on, as the troops had to go forward.

5. State what you did to find a pilot.

Ans. We went all over the city to find him. We then got a man by the name of Robert Dunlop, who was recommended to me by Mr. Mills to be a good pilot, though he had no license. I. W. Mills was an old steamboatman on the Ohio River. Capt. Mills said he (Dunlop) had been pilot for him, and had done well, and that he was the best man in the place without any license.

(All the declarations of the quartermaster and Capt. Mills were objected to as incompetent.)

6. State what you know of the collision. Did you make any efforts to obtain a pilot from any other boats—a licensed pilot?

Ans. I went to Capt. Raison to ask him to take the pilot off the American; he said he couldn't, and did not. I then went to him a second time, and asked him to take one off the Lawrence; he did not. We then started up the river. Nothing happened until we got pretty near the head of Diamond Island. We were running up Indiana shore, and we saw something black coming down the river. We could see no signs to designate that she was a steamer; no lights, nor anything to make us believe she was a steamboat. The Des Moines blew her whistle
209 twice to see if it was a steamer. In a short time we could see it was something black coming to us. The Des Moines stopped both engines, shipped up, and commenced to back; her engines had made at least two or three revolutions when we saw it was a steamboat, and she was then right on the top of us. She struck the Des Moines on the larboard side of the stem, knocked her stem band off and part of the stem. The force of the blow knocked the Des Moines' head around, rounded us to, right in the river. As the Katie passed our head, her wheel was going ahead under full head of steam; she went on by us, and in a few minutes she called to us that she was sinking. The force of the blow knocked us clear round, and she passed on by our head. She wanted us to come alongside. Just as she struck us the pilot of the Katie left the pilot-house, and jumped into the river. I saw a man jump out of the

pilot-house on to the roof, and then jump into the river. As soon as I saw him jump, I went down stairs, and helped pull him out as he came alongside of our guards. After we got him on deck, he went back, and crept under the boilers, and lay down there. Soon as I saw how the boats were, I took him up stairs, and gave him a suit of clothes to put on in place of his wet ones. He was then so drunk he could not stand up at all. I had to help him up stairs. As soon as he got on his clothes he went to bed, and I didn't see him until next morning. He said he was the Katie's pilot, on watch at the time of the collision; his name, Gus. Mellon.

7. What signals, if any, did you hear from the Katie before the collision?

Ans. I heard none; she never answered any. I was on the roof all the time from the time the Katie was within half a mile of us until the collision—forward on the roof, by the bell. Capt. Conrad
210 was there, standing near me. We stooped down on the roof, and looked at her to try and see what it was. We thought, at first, it was a flat-boat. It was a very dark night. I saw her first at least half a mile off, like a black spot. The Des Moines was running about forty or fifty yards from the Indiana shore, medium speed—seven or eight miles an hour, was about the best she could do. I tried her once or twice; that was about the best we ever got out of her. We had not been running very fast, we had so many troops on board. We were full half a mile off when the Des Moines blew her whistle twice. I was standing by the bell when the whistle blew twice. I never went down stairs until the man jumped overboard. I then went down on the forecastle, and was there until we got hold of the boat, and were towing her into the bank; then I went up stairs again. We made a tow line fast to her after the collision, and towed her into the shore, put a line out on shore, and made her fast. When the Des Moines rang the bells to stop, we were full four hundred yards off. She rang the bell to stop about two minutes after she blew the whistle, and then immediately rang the backing bells. She was a boat that checked herself up right quick when she went to back. The collision took place about 40 or 50 yards from the Indiana shore; not more than that. Our headway had been entirely stopped, and we were going back when she struck us. When we were turned across the river, the stern of the Des Moines was pretty close to the bank; not more than 75 or 100 feet; when they stopped her, and came ahead on her. The Katie was apparently pretty close to the Indiana shore before the collision until she came around the point; she was below the point, in the bend, when she started out. From
211 the time I saw her she was pretty close to the bank, hugging the shore. I have been steamboating for seventeen or eighteen years; I have been captain of four or five boats, and have clerked a great deal. A descending boat, like the Katie, at that stage of water, should have been clear out in the middle of the river. I have been up and down there a thousand times; six or seven times a month, for two years, running in the packet trade between Louisville and St. Louis. The water was then at a high stage; eighteen or twenty feet in the river. I was watching this object from the time I went on the roof. If she had answered the whistle, and kept according to the signals, the thing would never have happened. They would have been three or four hundred yards apart; she clear over on the other side. She could have run alongside the island. As soon as they hallooed for assistance we went right to her. When they hallooed to us the Des Moines was right across the current. The Katie was a little below us, heading right toward the isl-

and. If there had been a signal from the Katie, I should have heard it. She had no signal lights, nor lights about her cabin. I could have seen them had there been any. Capt. Conrad and I knelt down on the roof to see if we could see any lights. There were seven hundred and fifty troops on board of us. We got a licensed pilot at Evansville as soon as we got to a place where we could get one. When we left Cairo we had our complement of licensed pilots from St. Louis to Nashville. We took them at St. Louis. I paid the bill for damages to the Des Moines; it was between five and six hundred dollars. I notice the guards of the Katie were smashed in.

(Exhibit "A" was handed to witness, and he said they were their sailing orders from the different places therein named.)

212 Cross-examination:

No contract was made with the quartermaster at Nashville for carrying these troops. She was chartered at Cairo by Wollfolk, quartermaster; she was chartered by the Government for the whole season. At the intermediate points we were subject to the orders of the quartermaster. The charter was made by me for the boat. Capt. Conrad was owner, and capt. part of the time. I was clerk. I had seen Gus. Mellon before this accident; he said he was pilot on watch that night. I asked him if he was pilot on watch that night when he was changing his clothes. That was all the conversation that passed between us. I saw him jump in the river, and helped him out myself. I suppose he jumped in because he had no more sense; he came pretty near getting drowned; if he had been sixty feet further back, the wheel would have taken him. I don't know whether he went under more than once when I saw his head come up. I leaned over, and caught hold of him. The captain was the only one on the Katie that I considered sober. The Katie was quartering across the river when she struck the Des Moines. There was no effort made on their part to save the Katie. If they had made any efforts, they could have saved her. A tarpaulin would have saved her. When I first saw the Katie coming down the river, she was to our larboard, hugging the Indiana shore close; when she got down toward us, she shot across our bow. There was a bend at that point; we were in the bend. She was up by the point when I first saw her; she turned the point, and came right down the bend by shore. The collision took place just below the point; I can't tell exactly how far. The head of Diamond Island was about opposite the point; a little
213 below, perhaps. I saw no light on board of the Katie. I did not see her fires, because her boilers were away back in her engine-room; her chimney was way back; she had one chimney. One could not see her fires, looking from any direction. When she got right on top of us we could see her cabin lights.

Reëxamination:

When I speak of charter I mean an order to go into service. Exhibit "A," above referred to, was the only charter we had. The order of November 19th & November 21st, marked "B," was the one we were sailing under. These orders were the only charter we were sailing under.

(Signed) T. W. SINGER.

"EXHIBIT A."

OFFICE COM. SUBS.,
Cairo, Illinois, Nov. 2d, 1864.

CAPTAIN: In obedience to orders received from Col. T. J. Haines, chief com'y, St. Louis, Mo., and an urgent request from Gen'l Meredith, com'd'g western dist. of Kentucky, I have the honor to request that a boat may be sent immediately to Columbus, Ky., for the purpose of towing to this place two barges, containing 1,500 barrels of salt, sut's stores.

I am, sir, very respectfully,

J. P. LANGDON,
Capt. & C. S.

Capt. A. C. WOOLFOLK,
A. Q. M., Cairo, Ill.

OFFICE ASS'T Q. M.,
Cairo, Ill., Nov. 2d, 1864.

St'r Des Moines will proceed immediately to Columbus, Ky., reporting to Capt. T. C. Buntin, A. Q. M., who will assign her the two barges salt herein designated. She will return to this port without delay, as her services are much needed, bringing with her the two barges.

A. C. WOOLFOLK,
Capt. & A. Q. M.,
By J. B. CHURCH.

A. Q. M. OFFICE,
Columbus, Ky., Nov. 3d, '64.

The steamer "Des Moines" reported at 7 o'clock a. m., this day. She will take in tow two barges containing salt, sub-stor's, and proceed to Cairo, Ill., without delay, reporting to Capt. A. C. Woolfolk, A. Q. M.

L. W. SHEPHERD,
Capt. & A. Q. M.

OFFICE ASS'T Q. M.,
Cairo, Ill's, Nov. 4, 1864.

St'r Des Moines reported at 6.30 p. m. She will put the salt on board the barges, take 500 bush. coal, then report at grain warehouse for load of oats, & when loaded, will proceed to Nashville, Tenn.

A. C. WOOLFOLK,
Capt. & A. Q. M.,
Per J. B. CHURCH.

A. Q. M. OFFICE,
Paduca, Nov. 13, 1864—7 *p. m.*

St'r Des Moines reported as above. She will proceed as directed by Capt. A. C. Woolfolk, A. Q. M.

A. L. COFFIN,
Capt. & A. Q. M.

A. Q. M. OFFICE, SMITHLAND,
Nov. 28—10 *a. m.*—1864.

The steamer Des Moines reported as above. She will take on 200 bu. coal, and proceed as directed.

H. RASIN,
Capt. & A. Q. M.

ASS'T Q. M. OFFICE,
Paduca, Nov. 28—1 *p. m.*

St'm'r Des Moines reported as above. Will proceed at once, reporting at Cairo, to Capt. A. C. Woolfolk, A. Q. M.

J. H. WILSON,
Capt. & A. Q. M.

B.

ASS'T Q'R M. OFFICE,
Smithland, Ky., Nov. 14, 1864—10 *a. m.*

Steamer "Des Moines" reported as above. She will coal and proceed as ordered.

H. RASIN,
Capt. & A. Q. M.

OFFICE A. Q. M.,
Clarksville, Tenn.—9½ *a. m.*—*Nov.* 17*th*, '64.

Steamer "Des Moines" reported as above. After coaling, you will proceed as ordered.

J. P. WILLIAMS,
Capt. & A. Q. M.

A. A. Q. M. OFFICE,
Nashville, Nov. 19*th*, 1864.

Steamer "Des Moines" reported at 6.30 p. m., Nov. 18th. Having received 735 officers and men of the 7th Pa. Cav., she will proceed to Louisville, Ky., and report to Capt. Frank Ernst, A. Q. M.

S. H. STEVENS,
Lieut. and A. A. Q. M.

A. Q. M. OFFICE,
Smithland, Nov. 21*st*—11 *p. m.*

The st'r Des Moines reported as above. She will proceed on as directed by Lt. S. H. Stevens, A. A. Q. M.

H. RASIN,
Capt. & A. Q. M.

OFFICE RIVER TRANSPORTATION,
Louisville, Ky.—9 *a. m.*—*Nov.* 25, '64.

Steamer "Des Moines" reported as above. If ordered to Cincinnati for cargo, she would be unable to descend the falls at this place upon her return, as the river is falling very rapidly. And as there is no freight here, the steamer "Des Moines" will return at once to Cairo, Ill's, and report to Capt. A. C. Woolfolk, A. Q. M., there.

FRANK R. ERNST,
Cap. & A. Q. M.

OFFICE ASS'T Q. M.,
Cairo, Ill's, Nov. 29*th*, 1864.

St'r Des Moines reported at 6 a. m. Will load with oats, and report for further orders.

A. C. WOOLFOLK,
Capt. & A. Q. M.,
Per CHURCH.

Peter Conrad.

The deposition of Peter Conrad, on behalf of the respondent, taken before Edmund T. Allen, esquire, a notary public in and for the county of St. Louis, in the eastern district of Missouri, at the city of St. Louis, in said eastern district, on the 3rd day of June, 1867.

PETER CONRAD, of lawful age, deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

1st int. State your age, residence, and occupation?

Ans. I reside in St. Louis; am 46 years of age, and am steamboating.

2nd int. How long have you been steamboating?

A. About 18 years.

3rd int. Are you the respondent in this case?

A. Yes, sir.

4th int. Were you on board of the Des Moines at the time of the collision?

A. Yes.

5th int. In what trade was the boat running at the time?

A. From Cairo to Nashville.

6th int. State how she came to be going up the Ohio towards Evansville?

214 A. We loaded her at Cairo for Nashville, and when we got to Nashville, the quartermaster ordered her to Louisville with a load of troops.

7th int. State what movement was making then in the Army in regard to troops?

A. I think Thomas' Army was moving in that direction, towards Louisville; there were a great many troops going that way, and I understood it was Thomas*es* Army, or a part of it.

8th int. In what direction?

A. Towards Louisville.

9th int. Where were you about to go, and where would you have gone, regularly in the trade that you were at?

A. To Cairo.

10th int. When did you first hear anything to the contrary?

A. On our arrival at Nashville, the quartermaster ordered me to unload the boat as quick as possible, and take on board a load of troops for Louisville.

11th int. Where were the troops then?

A. Right out on the bank—they just arrived at the bank as we made our landing.

12th int. State whether the boat unloaded in the usual manner, or how?

A. The quartermaster ordered me to unload as quick as possible. I told him we had'nt much of a crew, only 16 or 18 men, and he told me he would furnish me all the men I wanted to unload the boat; he wanted the boat unloaded as quick as possible, and get the troops on board of us, for it was raining then, and he wanted to get them under cover. He sent us down 150 or 200 men, more men than we could possibly work, but he did it to save time, so that we could get unloaded as quick as possible, and as soon as we got the deck load off the troops came on board.

13th q. What else occurred there?

A. I told the quartermaster that we had no Louisville pilot, and he ordered me to go out and get one. I went out, and looked all

215 around, and I found there was none there, that all the boats that were going in that direction only had but one. I went back to the quartermaster and told him there were no pilots there, and he ordered me to go with mine as far as Smithland, and I done so. He told me that the quartermaster at Smithland would furnish me a pilot there; that there were some living there all the time, and I could get one at Smithland.

14th int. What pilot did you have on board at Nashville?

A. We had our Cairo or St. Louis man on board, our Nashville pilot.

15th int. After that occurred what took place at Nashville?

A. We had a load of troops, the 47th Pennsylvania, some seven hundred and sixty-odd men.

16th int. What other load, if any?

A. Nothing.

17th int. Any freight?

A. None at all.

18th int. Then where did you go to?

A. Smithland.

19th int. What occurred at Smithland?

A. I told the clerk to go out to report to the quartermaster and bring me an order for coal, and I would stay on board the boat, (the troops were very troublesome, and we had to have somebody there to stay on board the boat.) After he came back with the order for the coal, I went up to the coal pile, and went out and told the quartermaster we wanted a pilot, we had no Louisville pilot on board. He ordered me to go and get one. I went around the places where I thought I could find one, and I couldn't hear of any. I went to Capt. Mills—he has a boat store there. I made enquiries there, if there were any Louisville pilots there. He told me (what Mills said objected to by libellant) there was none there but one, and he had no license. From that I went back to the quartermaster, and told him that there was no pilots there but one, and

216 he had no license, and he ordered me to take him, and go with him until I could get one, (what Q. M. said objected to by libellant,) and I done so. I took him by his order.

20th int. Who was this man?

A. This was Dunlop; they call him Bob. Dunlop.

21st int. State as to what efforts you made—whether you made all the efforts you could to get a Louisville pilot?

A. There was none there; I couln't find any. The quartermaster ordered me to go and hunt for one, and I done so.

22d int. What occurred after that?

A. We left Smithland and went up on the Ohio River. We got to the head of Diamond Island. The pilot blowed his whistle twice, and I asked him what he blowed his whistle for; he said (what pilot said objected to by libellant) there was something ahead there, he didn't know what it was.

23rd int. Where were you then?

A. I was on the roof.

24th int. Were you captain of the boat?

A. Yes, sir.

25th int. Were you on watch at the time?

A. Yes, sir.

26th int. Continue, and state particularly what occurred?

A. I looked ahead, I saw something ahead, something black; I couldn't tell myself what it was. We went on about a minute, and the pilot rung his stopping bell, and after he rung the stopping bell the en-

gineer opened his door, and that kind of blindfolded me on the roof, and I laid down on the deck and looked forward. I couldn't perceive whether it was a boat or not. By that, she came closer to us (this object) and I saw it was a boat with one chimney. I told him she was coming into us—told him to back her; and from the movements—from the actions of the boat—the boat had backed, had made some 3 or 4 revolutions backwards before she struck us. As she came down, she apparently looked like she was going on the inside of us, and be-
217 fore she struck us she took a kind of shear, quartering out into the river towards the island; and she struck us and took us right round with her. After the boats separated they were pointed in the same directions, quartering towards the island, our stem close to the Indiana shore.

27th int. Where did she strike you?

A. She struck us on the larboard side, right at the stem. She knocked our stem band off, knocked our stem to the starboard, and broke 3 planks above the water's edge.

28th int. At what time did this collision occur?

A. About 9 o'clock in the evening.

29th int. And what date, do you recollect?

A. I think it was on the 22nd of November, 1864.

30th int. At what place was it in the river?

A. I am not acquainted with the river there; they call it Diamond Island.

31st int. How far from any town there?

A. Well, I heard them say it was 25 miles to Evansville. I am not acquainted with the Ohio River.

32nd int. Describe the course of the Des Moines, previous to the time when you saw this object; how was she going?

A. She was going up the river pretty close along the Indiana shore.

33rd int. How far do you suppose she was from the shore, at the time you first saw the object?

A. Well, she was then coming over towards the Indiana shore, making her crossing; she had nearly crossed over to the Indiana shore.

34th int. When she had crossed over, and taken her position so as to run up, how far was she then from the Indiana shore?

A. She was within 40 or 50 yards of the shore.

35th int. And what was her course from that time until the moment of the collision?

A. Well, she kept straight in the river. She never took neither side, she just kept on her course straight up.

218 36th int. You say she blew two whistles?

A. Yes.

37th int. What did that indicate?

A. To the larboard.

38th int. Which shore was that?

A. The Indiana shore.

39th int. Now describe the *portions* of the other boat in the river the first time you saw her?

A. Well, the other boat was coming down, showing a pretty good piece out in the river, and then she run like she was going to run on the inside of us—run to the Indiana shore. She "p'inted" in that way, laid her course in that way, until she came pretty close up to us. Then she changed her course.

40th int. Describe your position in the boat?

A. I was standing on the hurricane roof, as far forward as I could get, right against the railing.

41st int. How long had you been on the hurricane deck?

A. Well, I was on watch. I came on at 6, as we take it from 6 to 12.

42nd int. You had been on there since 6 then?

A. No, sir; I had been there more or less, up and down.

43rd int. Were you on there at the time you made the crossing?

A. Yes.

44th int. And how long did you continue on the hurricane roof?

A. I stayed on there until after we left this boat and everything—until we took this boat ashore—after this boat was sunk. I stayed on this roof until we landed at the Diamond Island shore.

45th int. Who was at the wheel of your boat?

A. Dunlop.

46th int. Just go on and describe what your boat did in reference to the signals given, and the bells rung?

A. He blowed his whistle. He blowed two whistles, and he rung the stopping bell, and he rung the backing bell.

47th int. Were those signals of the bells responded to?

A. Yes, sir.

48th int. When you first saw the other boat, what was visible about her?

A. Nothing; we couldn't see anything but a black looking ob-
219 ject. I couldn't tell what it was. I didn't know whether it was a flat-boat or whether it was a propeller; they look black in the night. I couldn't see no light; couldn't see anything; couldn't tell what it was until she came close to us.

49th int. If there had been any signal lights on the boat, were you in a position to see them?

A. Yes.

50th int. Were you looking at the boat?

A. Yes; I laid down on the hurricane deck, tried to get a view—to get a sight away from our light.

51st int. That was after the signal to stop?

A. Yes.

52nd int. What was your boat doing then?

A. She was stopping, waiting for an answer from the other side, to see if we couldn't hear a whistle.

53rd int. Did you hear any whistle from the other boat?

A. No.

54th int. When you laid down in this way, where was the other boat; what was she doing?

A. Coming towards us, down the river.

55th int. In which direction?

A. Like as she was going on the inside of us. I couldn't exactly tell what way she was going until she got close to us, then I saw which way she was *pinting*; that she was then making a curve around, to go up.

56th int. Describe her course, how she altered, and came round.

A. She came down; when she got within about 50 yards of us she changed her course, and went straight out, quartering out, as if she was going to make a landing towards Diamond Island; she was running towards the Indiana shore, and then started out as if she was going to make a landing towards Diamond Island. That was the way she came when she struck us quartering.

57th int. Where was your boat at that time?

A. We were laying waiting to see what they were going to do.

220 58th int. How far were you from the Indiana shore?

A. 40 or 50 yards.

59th int. How near did she come to the Indiana shore, when she came round?

A. She must have been pretty near the same way.

60th int. Which way was her head pointed, and her stern?

A. Her stern was *pinted* towards the Indiana shore, and her bow towards the island.

61st int. At what minute do you mean, now, that her head was pointed so?

A. When she struck us.

62nd int. Describe how the Indiana shore runs there.

A. I am not acquainted with the shore there.

63rd int. Don't you know how it curves—how it turns?

A. No, sir; there was a point right above where she struck us—looks like a point. I am not acquainted with the river.

64th int. Describe how she came along, and what you saw as she came along, and came into you; how was she going—her rate, and everything about that.

A. She was coming into us, and when she struck us she was going right on, running the same as ever; her wheels were turning round as fast as ever, I suppose.

65th int. Did you see her wheel?

A. Yes. Her wheel was going round the same as if there was nothing the matter; she had never stopped her engine, or anything. She just kept going on until the two boats had separated. They *hollered* to us to come alongside—that they were sinking.

66th int. Describe how she came on, how she turned, and how your boat turned; the motions of the boats as they came together.

A. When she struck us she took us right round with her. She struck us right in the bow, on the larboard side, and she just hit us
221 there, and *jest* took us right round with her. She pushed us over towards Diamond Island, so that our bow was *pinted* towards the island and our stern towards the Indiana shore, and she came round the same way, so that *jest* after the collision the boats were both *pinted* quartering over towards the island, with their sterns towards the Indiana shore. I think the bow was a little down, and the stern a little up.

67th int. Did you notice how near to the Indiana shore your boat was?

A. When we *was* turned round our stern was close to the Indiana shore. I ran astern to see whether we wouldn't hit the shore, and I found we were right against the shore, and I *hollered* to the pilot to go ahead on her. That was immediately after she struck us.

68th int. How did your stern get so near the shore?

A. She struck us, and turned us right around with her; that throwed our stern towards the shore. We were laying straight in the river when she first struck us.

69th int. What did the Katie do then?

A. I *hollered* to the pilot to go ahead, and I ran forward right away; and when I got forward they *hollered* on the Katie for us to come alongside, for they were sinking. I told the pilot to come alongside of her as quick as he could, and we were *pinted* in the same direction as she was, and all we had to do was to go ahead on her; and we came alongside of her, made a line fast to her, and towed her over close to the island, and landed her.

70th int. Immediately after the boats separated what did she do—which way did she go?

A. She kept on her course; never stopped.

71st int. In which directions?

A. She went towards the island.

71st int. Down stream?

A. Yes, sir.

72nd int. Did you notice her wheel?

222 A. Yes, sir; her wheel was turning over.

73rd int. How far did she float from the place of collision?

A. She was about 200 yards before we came to her, and I think we towed her between ¼ and ¾ of a mile before we got her ashore.

74th int. What happened after you got her ashore?

A. We took a line out and made her fast, and took what we could off of her; took the passengers and crew, and everything off of her. When we got her fast, and everything off, we left her and went on.

75th int. What became of her; what did she do while you were there?

A. They didn't do anything then; she was sunk.

76th int. Did she sink while you were there?

A. Yes; she sunk while we were towing her, as we got her there.

77th int. How long was she floating after the collision?

A. Some 10 minutes, I reckon, before she sunk.

78th int. What did you do then?

A. After we got everything off we left her, and went on to Evansville.

79th int. What happened, if anything, in regard to the pilot of the Katie? Did you see him?

A. Yes.

80th int. State what happened in regard to him?

A. I saw him in the cabin, and I thought he was as drunk as a man could be.

81st int. In the cabin of what boat?

A. The Des Moines.

82nd int. When was that?

A. After we got the Katie ashore.

83rd int. Immediately after?

A. Yes.

84th int. What was he doing, and what was his condition at that time?

A. He was like a drunken man.

85th int. What was he doing?

A. He wasn't doing anything. He acted like a man that had no feeling; no sense. He was wet. They had pulled him out of the
223 river, and they had him alongside of the stove, changing him, giving him some dry clothes, and they seemed not to do anything with him; he seemed to be helpless. From the appearance of the man I thought he was dead drunk. After they changed him they put him in bed.

86th int. Was he sick, or anything?

A. I went into his room there, and he spewed and done everything else in his room. It was a pretty bad-looking sight; it was the worst sight that ever I smelt, or ever I saw in my life.

87th int. State what the effect was in respect to the damage done to your boat?

A. We had our stem band knocked off.

88th int. What is the stem band?

A. It is an iron that is put over the stem for protection from logs, or anything you may hit.

89th int. How far does it extend on either side?

A. It don't extend anywheres, it just runs over the stem. It is about 3½ inches wide, and 2½ inches thick, and is fastened on to the stem—holes made in there, and drift-bolts driven into the stem to hold it.

90th int. How long is the whole piece?

A. The whole piece is about 14 feet long, and it reaches from the top of the stem, and goes down under the hull of the boat.

91st int. How is it fastened on?

A. With drift-bolts.

92nd int. Into what?

A. Into the stem. The bolts are generally from 6 to 9 inches long?

93rd int. How was this stem struck in this case?

A. It was struck on the larboard side, kind of quartering; knocked the stem over to the starboard, and took the stem band off.

94th int. Did it knock it entirely off?

A. Yes.

95th int. What became of it?

A. It was lost.

96th int. In the water?

A. Yes, sir.

224 97th int. What other damage was done?

A. Our stem was knocked off; it was clear split, so that we had to put in a new stem.

98th int. Where was it split?

A. Above the water.

99th int. Did you observe any other damage?

A. It broke 3 planks in our larboard side.

100th int. How was it in regard to the starboard side of your boat?

A. Nothing at all; the paint was not scratched there.

101st int. Did you notice outriggers in your boat; outriggers driven into it anywhere?

A. We had some outriggers from the other boat driven in where the three planks were broke; they were just driven in the boat. She hit us and left some of her outriggers in our boat.

102nd int. What are these outriggers?

A. What we call outriggers *is* the guards of the boat; the outriggers constitute the guards of the boat, what the guard is made fast to. The outriggers are made of wood, from 3 to 6 inches wide, and 3 inches thick.

103rd int. Where did these outriggers stick into your boat?

A. Right in our bow, where those broken planks were?

104th int. Which side?

A. The larboard side.

105th int. Were there any on the starboard side?

A. No.

106th int. Or in any other part except where this break was?

A. No.

107th int. Did you see these outriggers?

A. Yes.

108th int. When?

A. After we repaired the boat.

109th int. In regard to that stem band being knocked off, suppose your boat had run into another boat ahead, what would have been the

effect in regard to the stem band of the boat which run into the other boat; how does it strike; in what way does it effect or strike the steam band?

225 A. If we should strike anything head on, it is impossible to take a stem band off. You couldn't knock a stem band off by hitting anything head on; it has got to be done with a glance. I took one off once before by swinging on to a log; took one off with a side lick; but it is utterly impossible to take one off with a straight lick.

110th int. What would one of these stem bands weigh?

A. From 300 to 350 pounds.

111th int. When the object was coming on, did you see any smoke about it?

A. No, sir.

112th int. How far had it got from you before you could tell it was a boat?

A. She was then in about 100 yards.

113th int. And what did you see it was a boat from first?

A. I saw one chimney.

114th int. Was there any light on the chimney?

A. No; there was no light to be seen from anywhere—from the cabin or anywhere else. I didn't know she had a cabin on her until she came alongside of us.

115th int. How far was she from you before she made this turn around?

A. Within about 50 yards of us. She was coming down the river as fast as ever; she was just going ahead, and she changed her course.

116th int. How did you know that your boat had obeyed *had obeyed* the signals the pilot gave to stop and back?

A. From the action of escaping.

117th int. Explain that.

A. In all cases when she backed she throw*ed* water; that is, when they work her at full stroke she always, invariably, throw*ed* water in backing.

118th int. Which way did that throw the Des Moines?

A. Threw her backwards. We were going up the river, and, backing, that would throw her backwards.

119th int. She was going straight up, you say, and that would
226 put her straight down?

A. Yes; it would check her headway, and make her go backwards.

120th int. What was the size of your boat, relatively to the other boat?

A. Well, the Des Moines is 200 feet long, 32 feet beam, 5 feet hold, and she was a large boat alongside of the other one. I don't know what size the Katie was. I never saw the Katie before that time.

121st int. Suppose the boat of the size of your boat proceeding on, and the other boat also proceeding on, and your boat had struck the Katie head on, on her larboard side, what would have been the effect produced?

A. We would have run clear through her—we would have run plumb through her.

122d int. Why do you say so?

A. We were so much larger and heavier a boat, and if we had struck the Katie head on, we would have run right plumb through her; we would never have stopped at all. We had no headway; our speed was exhausted entirely when she struck us.

123rd int. If you had struck her head on—you going at any rate at all almost—what would have been the effect in regard to her sinking?

A. She would have never moved; she would have sunk right there in less than a minute.

124th int. How far did you say she floated before she sunk?

A. Between ½ and ¾ of a mile.

125th int. In what condition was your boat as to navigation at the time?

A. We had everything that the law requires. We had our signal-light up.

126th int. Wher' were they?

A. On top of the pilot-house. We had two poles on top of the pilot-house. We were in the Government service. We thought it was better to have them on the pilot-house to give a boat a chance at both ends. We were running with those fleets in the Government service, and we thought we would give boats a chance to see at both ends,
227 and we thought they would make us look in the night like a gunboat.

127th int. Were they visible at this time?

A. Yes.

128th int. Did you notice them up?

A. Yes; I saw them.

129th int. How was your boat in respect to the officers, crew, and equipments generally?

A. We had a full crew—what the quartermaster required when we went into the service.

130th int. Engineers?

A. Yes, sir.

131st int. Where are your engineers now—those that were on watch at the time?

A. The one that was on watch, the second engineer, is dead.

132nd int. Where is the other one?

A. The striker, I understood, was up about St. Paul's, at some place.

133rd int. Have you made efforts to find him?

A. Yes, sir; I have made an arrangement with two different men here in town to get all the information in regard to him that they could.

134th int. He was the striker?

A. Yes, sir. The 2nd engineer was on watch with the striker. We had a head engineer, two strikers, and a 2nd engineer. It was the watch of the second engineer and this striker.

135th int. How did this pilot, Dunlop, behave while you had him in service?

(Objected to by the libellant.)

A. He done as well as any man could do.

136th int. How did he handle his boat?

(Objected to by the libellant.)

A. Very well. He made his landings first rate—same as any other man. I couldn't see any difference from any other man.

137th int. Are you a pilot yourself?

A. Yes, sir.

138th int. How long have you been a pilot?

A. I have been piloting all my lifetime; that is, I never took out a license.

139th int. Can you tell from the way a man handles his boat whether he is a good pilot?

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139th int. Can you tell from the way a man handles his boat whether he is a good pilot?

A. Yes.

228 140th int. How did this man handle his boat?

(Objected to by libellant.)

A. As well as any man I ever saw in making his landings. He performed his duty under the rules and regulations of pilots.

141st int. In what trade was he a licensed pilot at this time?

A. He was licensed from Smithland to Nashville.

142nd int. After this collision occurred, were you in the pilot-house on any occasion, when Dunlop was piloting, when anything like this occurred, that you took the wheel from out his hands, while some barges or something else was coming along the river?

A. No, sir; there was no time that I took the wheel from Dunlop.

143rd int. Did you ever do anything of that kind?

(Objected to by libellant.)

A. No; I never took a wheel in my life from a pilot.

(Answer objected to by libellant.)

144th int. When did this engineer die?

A. He died two years ago, sir. He died at Lasalle, so his brother told me.

145th int. Had you been making efforts to find him?

A. No, sir; not up to that time. He was here in town, and I told him I wanted to get his deposition taken, and he went up there and died. I asked his brother about him, and he told me he was dead.

146th int. You were making efforts to find him when you were asking his brother about him?

A. Yes.

147th int. How is it as this other engineer, whether you have made all the efforts you can to get him?

A. I have made all the efforts I could. I have got two men in town to make all the efforts they can. I have sent word up there that I wanted to see him—that I wanted to get his deposition taken.

148th int. Where did you go with these troops?

A. To Louisville.

149th int. Was that where you were ordered to go?

A. Yes.

229 150th int. And then, after that, where did you go?

A. We went back to Cairo, and started and loaded for Nashville again.

151st int. And kept in the old trade?

A. Yes, sir.

Cross-examination by the libellant:

1st x-int. You have talked about this case a good deal, havn't you, captain?

A. Nothing extra; not a great deal.

2nd x-int. You have been told what it was necessary for you to swear to, to gain this case, havn't you?

A. No, sir; nothing only what I know.

3rd x-int. You havn't been advised as to what was necessary to be proven, in order to gain the case?

A. No, sir.

4th x-int. You went into Louisville after this accident?

A. Yes, sir.

5th x-int. Discharged your boat there?

A. Yes.

6th x-int. Returned to Cairo?

A. Yes.

7th x-int. Didn't make any repairs until you got back to Cairo?

A. No, sir.

8th x-int. Have you a copy of the order that the quartermaster gave you for taking these troops up from Nashville or Smithland?

A. Yes, sir.

9th x-int. Where is it?

A. I don't know where it is. It is either at home, or Mr. Rankin has got it.

10th x-int. Did you make any contract with the quartermaster at Nashville?

A. No, sir.

11th x-int. For the transportation of these troops?

A. No, sir; we were in the Government service, and he just ordered me to unload the boat.

12th x-int. You were then regularly in the Government service?

A. Yes.

13th x-int. Under a contract?

A. No; we were pressed in.

230 14th x-int. Where?

A. At Cairo?

15th x-int. When you went from Cairo to Nashville, you were pressed in?

A. Yes.

16th x-int. Did you ever get any pay for your services?

A. Yes.

17th x-int. You made no contract with the quartermaster?

A. No; we didn't know what we were getting. He paid us in proportion to the other boats when we settled with him.

18th x-int. Did you see the Katie after she was sunk?

A. I saw her on *her* return trip.

19th x-int. Did you examine her?

A. No.

20th x-int. How deep was she sunk in the water?

A. She was sunk, I think, to her boiler deck.

21st x-int. At the time of the accident, did you examine to see what kind of an injury she had received?

A. No; only what I saw on the roof at the time of the collision. I couldn't see it was anything but a "mash?"

22nd x-int. She had no hole in her?

A. No; I don't think there was any hole in her—just a kind of a "mash up." I think they could have saved the boat, if they had made *many* effort.

23rd x-q. She sunk before you left her?

A. Yes, sir.

24th x-q. You say she had no hole in her?

A. No, sir; I don't think she had a hole in her, more than a kind of a mash.

25th x-q. What makes you think it was a kind of a mash?

A. The way she struck us.

26th x-q. Did you see her afterwards?

A. I saw her at the time. The way her guards were doubled up, I thought it was a kind of a mash. I know there was no hole in her.

27th x-q. Were her planks broken?

A. I couldn't tell only when she struck us.

231 28th x-q. Don't you know the water couldn't have got into the boat if there had not been a hole in her?

A. I don't think she had any hole—what I would consider a hole. A hole is different from a "mash." There was a good many small holes; but a hole is where the water runs in free.

29th x-q. Were her planks broken?

A. Yes, sir; I think so.

30th x-int. How far was she from you when she called on you for assistance?

A. About 200 yards.

31st x-int. Was she sinking then?

A. They said so.

32nd x-int. Could you tell?

A. No, sir; only from what they said.

33rd x-int. Was she sinking when you got to her?

A. When we came alongside she had right smart of water in her forward.

34th x-int. Couldn't you tell if she was sinking?

A. I could see from the action of the boat that she had water in her.

35th x-int. If the water continued to run in her she would sink?

A. Certainly.

36th x-int. And you say it was 10 minutes from that time before she sunk?

A. Fully.

37th x-int. Do you know how wide the river is at that point?

A. No, sir; I am not much acquainted with the river there; but I suppose at that stage of the water it must be 700 or 800 yards between the island and the Indiana shore.

38th x-int. When you came down and saw her on your return trip, was it day or night?

A. Day time.

39th x-int. You saw the river then?

A. I took no notice of the width of the river.

40th x-int. You suppose it was 700 or 800 yards wide?

A. Yes, sir.

41st x-int. After the Katie struck you she went on down the river, didn't she?

A. She went on quartering across towards the island.

232 42nd x-int. When she called on you for relief, how far was she from the Indiana shore?

A. 300 yards—350 yards may be.

43rd x-int. When she struck you, was your boat going down stream or was she stationary, or going up stream?

A. I think she was going backwards, sir.

44th x-int. Had your engineer had time to stop the boat from the time the two whistles had first sounded until the two boats came together?

A. Yes; I think our speed had exhausted by the time he was backing.

45th x-int. How far was this boat from you when you first saw her at all?

A. She was about some over a quarter of a mile.

46th x-int. Was that after or before the pilot had blown his whistle?

A. That was right after the pilot blowed his whistle.

47th x-int. Was she nearer the Indiana shore, or the island shore?

A. She was nearer the Indiana shore than the island shore.

48th x-int. About how far from the Indiana shore?

A. When I first saw her I suppose she was between 200 and 300 yards. I couldn't tell; it was in the night.

49th x-int. Above or below the point of the bend?

A. She was above the bend—she was then.

50th x-int. When the boats came together, were they above or below the point of the bend?

A. Well, I don't know that there is any bend there; there is a point right there where we got together. I don't know whether there is a bend. We were right about at the point, as near as I could tell. There was a point to the left of us.

51st x-int. When the boats came together, were they above or below the point?

A. They were right below the point.

52nd x-int. Above or below the point of the island?

A. The point of the island was kind of quartering over. We
233 were pretty near the head of the island.

53rd x-int. How far from the extremity of that point on the Indiana shore when the boats came together?

A. Pretty close to the point.

54th x-int. Your boat then was running at that time along the Indiana shore, in the direction of the head of the island?

A. No, sir; we were running up the Indiana shore, and we were running under this point.

55th x-int. Wouldn't that direction take you towards the head of the island?

A. No; it would throw us all the way off to the left of the head of the island.

56th x-int. Then there was no bend in the river there?

A. Well, I am not acquainted with the river.

57th x-int. Can you say whether or not there was a bend there?

A. I can't tell; there was a bend right below us, a little bend, from the way I saw as we came down; but we had run that bend out.

58th x-int. How do you go when you get above the point that you speak of?

A. I don't know, sir; I am not acquainted with the river.

59th x-int. Your boat then was running straight up and down the river?

A. Yes, sir.

60th x-int. And you say the Katie was about 300 yards off when you first saw her?

A. When I first saw her she was—may be a little more than a quarter of a mile off.

61st x-int. How soon after the two whistles before the pilot rung the stopping bell of your boat?

A. About a minute or so. It may have been a little more.

62nd x-int. What did you say the two whistles indicated?

A. To the larboard.

63rd x-int. That is, that you intended to keep along the Indiana shore?

A. Yes, sir.

64th x-int. Did you remain on the hurricane deck all the time?

A. Yes.

65th x-int. How was it that your eyes were blinded by the fires of your own boat?

234 The fire-doors were opened. We stopped our engines. She was very easy making steam, and the engineer rung the bell to open the fire-doors. The engineer had ordered the firemen to open his doors after he stopped the engines, and they show a light forward, and it kind of blinds a man in the night—the light will, if you stand on a hurricane roof; but if you go down and get out of that light, or step

back, you can see ahead and see over the light. I have frequently done that when I have been on the roof and the doors have been open.

66th x-int. From the time you first saw that boat she came straight towards you, did she?

A. Yes; she came like as if she was going to take on the inside of us. She had her position that way. I couldn't tell what it was, whether a steamboat or a flat-boat, and she held her position, as though she was going on the inside of us.

67th x-int. You knew it was a boat, didn't you?

A. No, I did not. I couldn't see any sign of a boat about her. I couldn't see any signal lights.

68th x-int. How high was she above the water?

A. I suppose she was about 12 or 14 feet. She was an odd-looking boat any way. I never saw any such a boat any how.

69th x-int. Did she have any bulk-heads above deck?

A. She had a kind of a caboose, a cabin there.

70th x-int. Did she have any pilot-house?

A. Yes, sir.

71st x-int. How high was that above the deck?

A. Well, I don't know. It may be 10, 12, or 15 feet; I couldn't tell exactly. She was a very low-built boat.

72nd x-int. Did you ever see a flat-boat 12 or 15 feet above the water?

A. Yes, sir; I have seen hay boats 10 or 12 feet high, with roofs on them.

73rd x-int. Did you take this for a hay boat?

A. I didn't take it for a hay boat; but we couldn't tell what it
235 was. We could see something black ahead. It didn't indicate anything of a steamboat at first, until she got close enough to see one chimney.

74th x-int. You say your boat then was but 40 or 50 yards from the shore?

A. Yes.

75th x-int. And she looked like as if she was coming in between your boat and the shore?

A. When we first saw her we were further than that out; but we were making our crossing over from the foot of Diamond Island; but when the Katie struck us we were about 40 yards from the shore.

76th x-int. Then when you were going towards the Indiana shore she was going towards the Indiana shore?

A. She was pointing towards the Indiana shore.

77th x-int. Both boats were going towards the Indiana shore?

A. I couldn't tell exactly; only from the appearance of it, that she was going the same way we were.

78th x-int. That was after the pilot blowed his whistle?

A. Yes.

79th x-int. You hadn't made the crossing then?

A. We had just about run our crossing out. We were then crossing to the Indiana shore.

80th x-int. Had you made your crossing?

A. Yes; we had just about finished our crossing when he blew his whistle.

81st x-int. Then did you change the course of your boat?

A. No. We kept up along the Indiana shore.

82nd x-int. And the other boat was coming directly toward you?

A. Yes, sir.

83rd x-int. Did you make any effort to run your boat out into the river?

A. No.

84th x-int. Was there room enough to come between you and the shore?

A. No.

85th x-int. And she was coming right down towards you?

236 A. She was—yes, sir. She was p'inted in that way, and when she got within about 50 yards of us she turned right out. She was then pretty close to the shore, and then she took and p'inted herself right out.

86th x-int. When you made your crossing and got to the Indiana shore, you went right up stream?

A. Yes.

87th x-int. And she was coming down p'inting toward the Indiana shore?

A. I think so.

88th x-int. How far were you from her when the pilot rung his stopping bell?

A. We were within about 200 yards; may be more.

89th x-int. What speed had you been going at up to that time?

A. About 7 miles an hour.

90th x-int. Did you know about what speed the Katie had been going at?

A. I don't know anything about that.

91st x-int. You didn't undertake to turn the bow of your boat out into the stream?

A. No. We kept straight up the river. Our boat was steady in the river.

92nd x-int. The same course that she took after she made the crossing?

A. Yes.

93rd x-int. Without any change?

A. There was no change about her.

94th x-int. And you say the Katie, when she got within 50 yards of you, she turned towards the island?

A. Then we could see she was p'inting towards us. She took a start like as if she was going to make a landing, (and she was coming down stream,) and kept her position in that way until she struck us.

95th x-int. She came down stream side ways?

A. She was pretty near side ways when she hit us.

96th x-int. Did she go pretty rapidly in that way?

A. Her wheels were going over as if there was nothing the matter with her.

237 97th x-int. And your boat was then stopped?

A. Yes, sir.

98th x-int. Were you still on the hurricane roof at the time she struck?

A. Yes, sir.

99th x-int. Did it knock you over?

A. It pretty near knocked me down. I held on to the chimney guy—braced myself.

100th x-int. It knocked the bow of your boat around, you say?

A. Yes; she just took us right round with her.

101st x-int. Was your bow then turned down stream?

A. No; it was quartering across over towards the island.

102nd x-int. What part of the Katie struck you, her larboard or starboard?

A. Well, I think her starboard side struck us.

103rd x-int. Did you examine afterwards to see?

A. No, sir; I never examined anything.

104th x-int. When she made the turn that you say she did towards the island had she got down even with your boat in the river, or was she still above your boat?

A. She was above the boat yet; she held right for the other end of our boiler; the way she was p'inted when I first saw she was coming towards us; she was above us.

105th x-int. How far above you?

A. About 50 yards.

106th x-int. Did she turn square round?

A. No; she kept that way; kept getting round as if she was going to make a landing; she was nearly quartering when she struck us—quartering towards the island.

107th x-int. Did you go on board of the Katie that evening at all?

A. No, sir.

108th x-int. Did her passengers or crew come on to your boat?

A. Yes, sir.

109th x-int. Did you see the pilot of the other boat fall into the river?

A. Yes, sir.

110th x-int. He did fall in?

A. That is what they said.

238 111th x-int. You saw him after he was wet?

A. I saw him in the cabin sitting by the side of the stove—he was wet.

112th x-int. Where did he stay that night?

. They put him in the pilot's room.

113th x-int. What time did you go in the pilot's room afterwards yourself?

A. About two hours after the collision took place.

114th x-int. Was he asleep?

A. I opened the door to look in, and I saw the smell of it just disgusted me from going any further.

115th x-int. Was he asleep?

A. I didn't talk to him; I don't know whether he was asleep or not.

116th x-int. You couldn't tell whether he was asleep or not?

A. No, sir.

117th x-int. Do you know whether anybody else had been in the pilot's room that night?

A. Not as I know of.

118th x-int. Did you speak to him when you went in?

A. No; I just went in, and I found he had puked all over, and I went back. I did intend to go in and speak to him.

119th x-int. Did you go into the room?

A. Yes; I just opened the door; he was right over the boilers, and he had puked in the room, and made a very bad——

120th x-int. How do you know he had puked in the room?

A. I went into the room after he came out of it—when we landed at Evansville.

121st x-int. What was his name?

A. Mellon, I think, his name is; I am not acquainted with him.

122nd x-int. When he was down before the fire did you have any talk with him?

A. No, sir; they said that was the pilot of the Katie, and I didn't talk

to him. I don't think anybody else talked much to him. He looked like a man that was intoxicated from his actions.

123rd x-int. What sort of actions?

A. He was limber like a drunken man.

239 124th x-int. Did you have hold of him?

A. No; but I saw those that did. His arms would fall down when they took hold of him and let him go. He made no resistance.

125th x-int. You don't know whether he got hurt when he got on board?

A. I don't know.

126th x-int. But you supposed he was drunk?

A. Yes; I thought he was drunk from the appearance of the thing.

Reëxamination:

152nd int. You have spoken of the time you first saw the boat; at the time you first discovered the mass upon the water, could you then tell how she was quartering?

A. No; we couldn't tell anything about the way she was quartering then.

153rd int. When was it you first could see her so as to tell in which way she was quartering?

A. They were 50 yards apart when I first saw the way she was p'inting. It might be a little more or a little less—that was the first I could see. I could see the chimney, and then I could tell which way she was p'inting.

154th int. What did it cost to repair the damage done to your boat?

A. Some $600. I had to put in a new stem, and get a new stem iron, and put in a bow dock under her.

155th int. All that was in repairing the collision damage?

A. Yes; It was between $500 and $600—some $590, I think.

156th int. What stage of water was there in the river?

A. We considered it a very high stage of water. I think we had 5½ or 6 feet on the shoals, and that is considered a pretty good stage. So the pilot's say.

(Signed) PETER CONRAD.

240 *R. A. Dunlop.*

The deposition of R. A. Dunlop, on behalf of the respondent, taken before Edmund T. Allen, esquire, a notary public in and for the county of St. Louis, in the eastern district of Missouri, at the city of St. Louis, in said eastern district, on the 12th day of March, A. D. 1866.

R. A. DUNLOP, of lawful age, deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

1st int. State your age and place of residence?

A. I am 45 years old on the 14th of last February—out of the draft. I live in Livingston County, Kentucky.

2nd int. State your occupation?

A. I have steamboated more or less since 1841—beginning of 1841.

3rd int. Where were you in November, 1864?

A. I was at different places. I was at Smithland.

4th int. What business were you engaged in in November, 1864?

A. I was piloting from the mouth of the Cumberland to Nashville. I was at several places in November.

5th int. Where were you just before the Des Moines left Smithland?

A. I was at Smithland when she came there from Nashville, on her way to Louisville, loaded with troops. She wanted a pilot; landed there, and was there some three hours, I suppose. They wanted a pilot to take them to Louisville. They applied to Capt. Mills, who kept a boat-store there; he generally knew if there was any pilots about. But Capt. Mills told Mr. Singer, the clerk of the boat, that there was no licensed pilot there, but recommended me to him as a man who knew the river, but had no license. Mr. Singer told him he wanted a licensed man, and he would have to go and see the quartermaster. It was about dinner time of day. The quartermaster boarded at Capt. Mills. He came in there, and I came in about the same time. Mills and the quar-
241 termaster were talking. I don't know what they were saying, but Mills said, "Dunlop can take that boat as well as anybody; he has got no license; he knows the river as well as anybody, and I would as soon trust him as any licensed pilot." After they had spoken a few words more the quartermaster turned around to me and asked me if I could take that boat to Louisville, and I said, "Yes."

6th int. The Des Moines you are talking about?

A. Yes.

(Libellant objected to all of the foregoing as irrelevant.)

7th int. Did you go on board the boat?

A. Yes; I went on board the boat.

8th int. At Smithland?

A. Yes, sir.

9th int. State in detail just what took place after you went on board the Des Moines until the collision took place, and after that?

A. We proceeded up the Ohio River. We came to Diamond Island. I saw something coming down the river, or in the river. I couldn't tell whether it was a steamboat, or what it was. I saw the bulk—no signal lights. I blew my whistle twice to keep the Indiana shore, as I was then running. I got no answer from the boat. I waited a proper time, and I stopped my engines—both engines. I still got no answer. I couldn't tell whether it was a steamboat, or what it was; it had no chimney in sight, no signal lights, but I could see the bulk. I stopped then. The engines were long enough stopped for the headway of the boat to be run out, and I rung my backing bells, which was the signal to reverse the engines. I saw she was getting so close that I thought I had better back. I then rung the bells to back her—she backed on both engines, and the Katie run into us shortly after, so that, the boat backing, she struck me on the larboard bow, and knocked me round in the river with the stern towards the Indiana shore, and she kept
242 on her course towards the island; she didn't stop her headway any. That threw us in the same position then that she was. She knocked my head down the river, and she was going that way herself, quartering down, and after she run past the wheel never stopped—all that I saw the wheel never stopped—the wheel was going when she run past. After they got out into the river—into the middle of the river I suppose—they hollered out they were sinking, and for us to come alongside. We went alongside of her, took the passengers off, and freight. We put a line to them and towed them over to the island shore, and after the Des Moines' crew got the freight off of her, they put out a line and made her fast. The crew of the Katie didn't do anything towards saving anything. We stayed there until we got all ready to start, and took the crew up the river to Evansville.

10th int. What was done with the freight that you had on board at Evansville?

A. It was put out there on the wharf.

11th int. Were the captain and clerk of the Katie there?

A. Yes; they all went up.

12th int. Went up with you?

A. Yes, sir.

13th int. State, as near as you can, about the distance that you were from the Katie when you gave the first whistle?

A. I think I was a full quarter of a mile off when I blowed the whistle, if not more. I was fully that anyhow.

14th int. How long did you wait listening for a signal—how long after you blew your whistle before you stopped your engines?

A. How many minutes?

15th int. Yes; about how long?

A. I couldn't exactly state how many minutes it was, but I waited what I thought a proper time. I still saw the thing approach-
243 ing—the bulk; I couldn't see no lights; I couldn't tell whether it was a steamboat, or what it was, and the reason I blew my whistle was to see whether it was a steamboat, or what it was. I waited a proper time, and stopped both engines.

16th int. Had the headway of the vessel stopped?

A. Yes; the headway had run out, and I saw it approaching, and I rung the backing bells, which was the signal to reverse the engine and have it ready to back—not to back—and then I kept looking to see what it was; and our fire-doors were open. We were that long stopped that the firemen had opened the doors, and the light shone out ahead, and the light struck on the pilot-house of the boat, so that I saw the name, but before that I started her to back, I saw her approaching so rapidly; and after I started to back she got so close that I could see the name of the boat. We were then backing, and Capt. Conrad was on the hurricane roof, forward, and he told me to back her; that that fellow was going to run into us. I told him she was backing.

17th int. What do you say was the effect of the collision on your boat?

A. She struck us on the larboard bow, and knocked us round in the river—whirled us right round.

18th int. So that after the blow which way was your vessel heading?

A. With our head towards the island, because she hit us on the larboard bow and turned us round, with our head towards the island and our stern towards the Indiana shore.

19th int. Immediately at the time the vessels came in contact, about how far were the vessels from the Indiana shore?

A. I was, I think, about 40 or 50 yards from shore—what I thought was a good distance to run to be safe at night.

20th int. From the Indiana shore?

A. From the Indiana shore.

21st int. You had been running about that distance?

244 A. Yes; that was about the distance I was running. I didn't *warble* about any. I didn't keep her to the right or left, but just held the position. I was right straight in the river.

22nd int. Running about 40 or 50 yards from the Indiana shore?

A. Yes; I think so.

23rd int. Whereabouts—that is, from the head of Diamond Island, did this collision take place?

A. Well up to the head of the island. I was at the head of the island. I wasn't down on the island. I was well up with the head of the island, opposite to the head of the island, you might say.

24th int. What was the stage of the water?

A. In the lower part of the river, I think it was marked 3. The further we went up in the river, along there on Shawneetown Bar and Henderson and Raleigh, it was fully marked 3—3 fathoms, I mean.

25th int. Was that high or low?

A. Yes; it was big stage. It wasn't as high as it gets, but it was high enough for up steamboats to run the shore close. It was at particular places.

26th int. What, in your judgment, was the width of the river from the head of the island over to the Indiana shore?

A. Well, it was fully 300 yards wide, and more than that, I think.

27th int. What is the character of the current of the river there—a good river?

A. Yes; the river is good there. That has never been a bad place even in low water; plenty of water there.

28th int. What kind of a channel was there; swift there, or otherwise?

A. At that stage of the water there was a pretty strong current in the Ohio River. There was some drift running—not bad.

29th int. When, just after the collision, when you say the bow
245 of your boat was turned round, about what distance would that leave the stern of the Des Moines from the Indiana shore?

A. Well, sir, our stern must have come very close to the shore. Mr. Manly came in and told me to go ahead on her; that her stern would hit the bank.

30th int. Was that a bluff bank there?

A. Yes; a bluff bank on the Indiana shore, and deep water.

31st int. I wish you would describe that boat—the Katie.

A. She wasn't like any other steamboat I ever saw, except one, and that one wasn't hardly like either—the "Carrie." She was more of a steamboat than the Katie was.

32nd int. There was nothing in the earth like her?

A. No; nor in the sea.

33rd int. Did you see her before the collision?

A. Yes; I saw her several times. I knew her when I saw her.

34th int. Describe her.

A. She was a boat that had the power all aft, both boilers and engines, away back in the stern of the boat. She had one low chimney, and it was on the stern; and to meet her at night, without she had signal lights, you wouldn't know whether it was a hay stack or a pile of drift, or what it was.

35th int. Did you know the pilot of the Katie?

A. Yes, sir.

36th int. Where did you first see him, prior to, at the time of, or after the collision?

A. I saw him in the cabin of the Des Moines, when I came down out of the pilot-house, after we had made fast to the island shore.

37th int. What is his name?

A. Gus. Mellon.

38th int. What condition was he in at that time?

A. Well, he looked to me like a man that had been drunk and fell into the river. He was all wet.

246 39th int. Did you see him in the river.

A. No, sir; I didn't see him in the river. I was in the pilot-house. I never left it until after we landed.

40th int. Who was on watch with you?

A. The captain was on watch.

41st int. Captain who?

A. Capt. Conrad.

42nd int. Where was he?

A. Out forward, on the hurricane roof, and saw it all.

43rd int. What engineers were on watch?

A. I don't know whether it was the first or second engineer and striker, one or the other. I don't know which it was. They were strangers to me. I had only been on the boat a few hours. I couldn't tell whether it was the 2nd engineer or head engineer.

44th int. How were the signals for backing and manœuvring the engines obeyed—promptly, or otherwise?

A. The boat handled like a duck. There was no doubt about that. She handled well.

45th int. When you made your signals for the engines to act, were they answered promptly, or otherwise?

A. When I rung the stopping bell it stopped her—they stopped her; and when I rung the bell to back, they backed her.

46th int. When you came together how far had the Des Moines got turned around before you parted company and left each other; you say the Katie went in?

A. Yes; she never stopped there at all. She went right on. As soon as she struck us I stopped backing. I knew if we backed any more we would strike the shore.

47th int. What I meant to get at is this: how far had you got turned round, with reference to the channel, before the Katie left you?

247 A. She just came and struck us on the larboard bow, and threw us round, and went right on. She didn't stick to us at all. There was no hold at all, that I know of. She knocked us round so quick it would make your head swim, and she just went on.

48th int. Her head was then pointed towards the island, you say?

A. Yes, sir.

49th int. How far did she run towards the island before they hallooed out to you that they were in distress?

A. I think she run $\frac{2}{3}$ of the way across to the island. They wern't long before they hollered. They didn't blow their whistle—they blowed their own whistles.

50th int. Did you notice, as they passed you, the wheel?

A. Yes.

51st int. Where was the wheel?

A. Right behind.

52nd int. A stern wheel?

A. Yes.

53rd int. What was its action?

A. It was going just as fast as ever I saw a stern-wheel boat running.

54th int. As she passed you?

A. Yes; as she passed.

55th int. What is the length of the Des Moines, if you know?

A. I would suppose she was 200 or 220 feet. She wasn't a "lock boat." They are about 184 feet long.

56th int. Where was the Katie landed—how far below where the collision took place?

A. We landed her just at Priest's Landing. I think that is—may be, $\frac{1}{2}$ a mile from the place where the collision took place.

57th int. Is that on the island?

A. Yes; I have taken tobacco there many a time. We struck the shore long before we got there, but they didn't put out any line, and we dared not work her up very strong for fear of breaking the line. She kept washing down *washing down* until we got just below Priest's Landing, and ag'in we got down there they got a line out. The crew of the Des Moines had the freight out by that time.

248 58th int. You say half a mile below where the collision took place?

A. Yes; I think so. I don't think it was over that.

59th int. Who put the line out of the Katie?

A. The crew of the Des Moines put it out and made it fast.

60th int. About how far were you apart when you discovered that this was a boat?

A. I think she was 50 yards off when I saw the name, and the light shone on the pilot-house.

61st int. How many engines had that boat, (the Katie,) do you know?

A. I think she had two. Stern-wheel boats generally have two.

62nd int. Did you see any of the engineers?

A. Yes; I saw them on the Des Moines, in the cabin.

63rd int. Were you acquainted with them?

A. No; I was not acquainted with them.

64th int. About what time was it that the collision took place?

A. About 9 o'clock at night, I think.

65th int. How far below the place where the collision took place—for what distance below that had you been running along the Indiana shore?

A. I just crossed over under the point from the island bar.

66th int. And had been running up along there how far?

A. I had run, I suppose, 150 yards after I straightened up the Indiana shore.

67th int. Where is the clump of trees with reference to the head of the island—the tallest trees there?

A. There is a bunch of timber right below West Franklin, and then below that, and down in the bend just below is another clump of trees cotton-wood. Right where we came together I don't think there were any trees. There is a little here and a little there. A very short distance below and a very short distance above there are some.

58th int. You went on with the Des Moines, you say; how far
249 did you go with her up the river; how far did you pilot her?

A. I took her to Evansville.

69th int. Who did you get there?

A. I got a licensed man. I done what I said I would; pilot her until they could get a licensed man.

70th int. You went on to run until you got a licensed pilot?

A. Yes.

71st int. Whom did they get there?

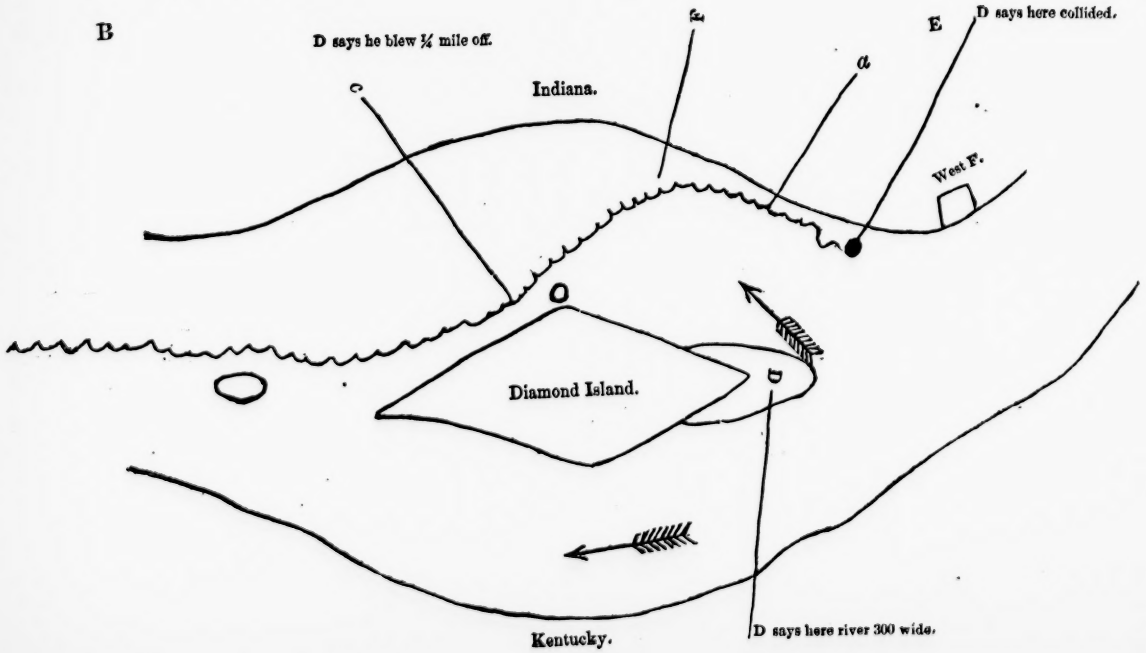
A. A man by the name of Ludee.

72nd int. Does the head of Diamond Island come up as high as the short bend up above that—between that and West Franklin?

A. You and me don't understand "bends" alike. I call that the point. Yes, the head of the island is abreast of the point. The point that West Franklin is on runs higher up than the head of the island.

73rd int. Tell us where the collision took place on the map marked "B"?

A. At the point on the map, marked "E."


B
D says he blew ¼ mile off.
c
Indiana.
E
D says here collided.
a
West F.
O
Diamond Island.
D
Kentucky.
D says here river 300 wide.

74th int. What do you say about this island, as to whether it is correct, or otherwise; is it now correct?

A. That is a pretty good sketch of it, as it stands. I think that is about high enough up to the head of Diamond Island.

75th int. Now you say, if I understand you, from the head of the island over across how much water was there?

A. When I spoke of mark 3, I mean on the principal bars.

76th int. What is the distance of good water across from the head of the island over to the Indiana shore?

A. It was fully 300 yards, if not more. There is a plenty of room at that stage.

77th int. Describe on the map about where you were when you straightened up in the Indiana shore?

250 A. About at the point marked "F." I started from a point on the Indiana shore, and crossed over to the island shore, and then passed over on the Indiana shore under the point below West Franklin, and at the point marked "F" I straightened up along the Indiana shore. I call the part of the Indiana shore opposite the head of the island a point.

78th int. Mark on the map the point on the Indiana shore where you started from before you run up the island shore?

A. The map doesn't show the point on the Indiana shore that I started from; it is away below the island.

79th int. Now, sir, watch where my pencil goes?

(Counsel for respondent then made the zigzag line on map "B," hereto annexed as an exhibit, running up river and crossing from the island shore to the Indiana shore.)

A. Yes, sir; that is about it, viz, the course of the Des Moines up the river.

80th int. I want you to describe about where it was (on that map) that you blew your whistle.

A. Well, I was along the island shore. I had a better chance there to see the boat up there, (pointing to the map.) I saw her before I got under the point below West Franklin, and blowed plenty in time.

81st int. Where did you blow your whistle?

A. I crossed over there, and blowed the whistle.

82nd int. Here at the point marked "F."

A. Yes; right under the point there—about there.

83rd int. Now show to the notary; take the pencil, and show to the notary how you did run.

A. Well, sir; I run up the island bar here (following the line already mentioned above) until I got up far enough to cross over, and I crossed over on the Indiana shore, on the point here below West Franklin,

251 and run along up.

84th int. How far below West Franklin, when you straightened up the shore?

Well, ½ a mile, or ¾ of a mile; ½ a mile, I reckon, from West Franklin, where I got under the point here.

85th int. Describe on the map where you were when you first saw the object in the river—about where.

A. As I stated before, I saw it when I was ready to cross over here (pointing to the map) from the island bar, at the point marked "O." I was going to state that I want this to be understood that it was a good stage of water, because you can't run when the water is low on the island bar. It was a very good stage of water, and I was running the shores.

86th int. How long have you been piloting on the Cumberland River?
A. 3 or 4 years. I commenced after the war commenced.
87th int. How long have you been boating altogether?
A. Since February, 1841.
88th int. When were you licensed for running on the Ohio River as a pilot?
A. Well, this thing happened in November, and some time in December I got licensed for the Ohio River.
89th int. From where to where?
A. From Cairo to Louisville.
90th int. Where were you licensed?
A. Nashville.
91st int. How was the Des Moines loaded?
A. She was full of troops.
92nd int. Do you know how many?
A. Well, that would be only hearsay; I never counted them.
93rd int. How long have you lived where you live?
A. I moved there in the spring of 1850.
94th int. Are you well acquainted with Smithland?
A. Yes.
95th int. How far do you live from Smithland?
A. 6 miles.
96th int. How many inhabitants in it, about?
A. It is the county-seat of Livingston Co., and it is rather a
252 small place. It has been a brisk place in its time, but it has rather went back.
97th int. At the time the Des Moines left there, or the time you went on her, how many, if any, licensed pilots were there at Smithland?
A. There wasn't any; none that belonged there. There was some boats laying there.
(Last question and answer objected to by libellant as irrelevant.)
98th int. You say there were none?
A. No, sir.
99th int. State what efforts, if any, the officers of the boat and the quartermaster made to ascertain whether there was a licensed pilot or not.
(Objected to by libellant as irrelevant.)
A. They looked around there for 2 or 3 hours to try and get a man; but Capt. Mills told them they couldn't get any, when they first came there, and——
COUNSEL FOR RESPONDENT. You needn't state what Capt. Mills told them.
WITNESS. The had to inquire before they could get a man.
100th int. State if they inquired.
A. I saw Mr. Singer running round there, trying to get a man, when I was introduced to him as a man that knew the river. He wouldn't take me at all, because he wanted a licensed man.
101st int. That was how long before you went on board?
A. Some 2 or 3 hours. They were there a good while—fully 2 or 3 hours; may be more than that. I can safely say 3 hours. They came there sometime in the forenoon, and I was there long after dinner.
102nd int. What pilot, if any, did they have on board?
A. The Cairo pilot.
103rd int. What was his name?
A. John Manly.
104th int. Where does he pilot?

253 A. He is considered a St. Louis pilot, from here to Nashville and I don't know where else.

105th int. What experience had you in boating over that part of the river; how long had you been running over there?

A. The first trip I ever made was on that part of the river, and I have been at it more or less every year since.

106th int. At that stage of the river, I wish you to state where would have been the proper place for the steamer Katie from the place where the collision took place?

A. Well, sir, down-stream boats generally shape the river, to keep about in the middle of it, when there is plenty of water. I never saw a down-stream boat crab round a point like she did.

107th int. My question was, where ought she to have been to be in her proper place, at that stage of water and at that place?

A. She ought to have been out 150 yards from shore, at that stage of water, and at night particularly.

108th int. Suppose she had been 150 yards from the shore.

A. Well, she never would have touched us.

109th int. How far from the place of collision was it to Evansville?

A. About 25 miles from West Franklin to Evansville.

110th int. What was the damages, if any, done to the Des Moines?

A. Well, it knocked her stem band off, and some of the outriggers of the Kate run into the Des Moines' side just abaft of the stem.

111th int. About how much was she damaged?

A. I couldn't state.

112th int. Do you know how much it cost to repair her?

A. The way things were at that time, it must have been $400 or $500.

113th int. Do you know of your own knowledge?

A. I don't know. I merely spoke of the way things were at that time. The stem band was knocked off, and you see that is a big item.

114 int. You were licensed about 20 days after this to run from
254 Cairo to Louisville?

A. Yes, sir.

115th int. You say the Katie struck you on the larboard bow?

A. Yes, sir.

116th int. Now, I want you to describe how she was coming (when you first saw her) towards you, or how was she heading with reference to the bank?

A. She was heading with her wheel towards the bank, and quartering out.

117th int. When you first saw her—when you read her name?

A. She was quartering out, with her wheel towards the shore, and her head pointing out towards the island.

118th q. Now then, was that the condition she was in when she came down into your boat?

A. That is the way she hit us.

119th q. Was she any more quartering, or not so much so at the time of the collision, or about the same?

A. She was about in that position when she struck us. I say they never straightened her any, but she straightened us when she hit us, just knocked us right round.

120th int. Then from the time when you first saw her, when you read her name, until she struck you, she was still in that position quartering off?

A. I didn't see as she altered her course any; she came right on.

121st int. How near had you run that bend out?

A. That point. I would have kept that side fully ½ a mile further up, and then crossed over on the other point. That was the way I was running at that stage of water. Up-stream boats run the shore, if possible, unless there is some high bar that they can't run. I would have run that point up until it opened, and then crossed over to the right bend point again.

255 122nd int. How long have you known this man Mellon?

A. Ever since I have been about Smithland—before he went to steamboating at all.

123rd int. What is he, sober or otherwise?

A. Yes; he is sober when he can't get whisky.

124th int. Where did he go when he came on board your boat?

A. Well, I don't know; I wasn't down in the cabin then.

125th int. Where did he stay that night?

A. He slept in the pilot's room.

126th int. In your room?

A. Yes.

127th int. What was the condition of your room after he was there?

A. It smelt like a whisky barrel after he got out of it.

128th int. Did you talk with him before he went to bed?

A. No, sir. He just hung his head down, and never looked at me. He looked like he had done something he was ashamed of, and I don't blame him, either.

129th int. Who was in the pilot-house with you, if anybody?

A. Manly came into the pilot-house, just about the time she struck us, and told me to go ahead, for she was backing into ———

130th int. He was there?

A. Yes. He had a better chance to see how near she was to the bank than I did.

Cross-examination by the respondent:

1st x-int. You say you have run the river since '41?

A. More or less.

2nd x-int. In what capacity?

I have been mating, the greater part of the time, up to the war.

3rd x-int. When did you first get licensed as a pilot?

A. I got licensed between 3 and 4 years ago.

4th x-int. What date was it?

A. I can't exactly tell without reference to my license. I could refer to that.

256 5th x-int. Did you ever have a license on the Ohio River till after this collision took place?

A. Yes. I stated in the first place I never had a license till I went on that boat.

6th x-int. Have you ever had a license on the Ohio River prior to this accident?

A. No, sir.

7th x-int. What kind of a night was it—the night of this accident?

A. A starlight night; a very good night.

8th x-int. How far was the Katie from you, when you saw her, as you crossed over from the island to the Indiana shore?

A. Well, a quarter of a mile; I saw her in plenty of time.

9th x-int. What is the length of that island?

A. I suppose it is a mile—three-quarters of a mile; it may be more than that. There are two tow-heads at the foot of the island. I sup-

pose it might be considered all island, but it is washed through in two places. I suppose it is a mile long; may be more than that—may be less; I can't just say what the length of the island is.

10th x-int. What did the Des Moines have on board besides the soldiers that you speak of?

A. I don't know of anything. She was about full of them as she could stick; I don't think she had room for anything else.

11th x-int. When this collision took place I understood you to say that the Des Moines had stopped her headway entirely?

A. Yes. The engines had stopped, and the headway run out.

12th x-int. Was she floating down stream?

A. Not till after we started to back her.

13th x-int. Was not the current swift enough to take her down stream?

A. Yes. But her headway had not been run out long enough for her to start backwards.

14th x-int. You say the Katie struck on your larboard bow?

257 A. Yes; struck us on the larboard bow.

15th x-int. How was your boat pointing at that time?

A. Straight in the river.

16th x-int. The larboard bow, then, would be next to the Indiana shore?

A. Yes, sir.

17th x-int. The Katie was quartering towards the island?

A. Yes; with her wheel in next to the point on the Indiana shore, and her head quartering down the river, and towards the island.

18th x-int. You were on watch that night, on the Des Moines?

A. Yes; I certainly was.

19th x-int. When you were enabled to read her name, was her name painted on her side?

A. On the pilot-house. The light of our fires shown on her pilot-house, and I then knowed what she was.

20th x-int. Whereabouts was it on the pilot-house, on the front or on the side?

A. I think it was on the front; she wasn't hardly quartering enough for me to see up on the side. I might have seen it on the side, but not so as to read it in a hurry.

21st x-int. What part of the Katie struck the Des Moines first?

A. It was her starboard bow; I don't think the stem of the Katie struck the Des Moines at all. I won't be sure, but, from the way she came, I think the swell of her starboard bow hit our larboard bow. Her stem might have hit us; I don't know; I couldn't say.

22nd x-int. When you say that she struck the larboard bow of the Des Moines how far from the point of the bow do you mean? I don't know what you call it.

A. How far from the stem?

23rd x-int. Yes.

A. Well, she must have hit us on the stem sideways, you know, because it knocked it loose, knocked it off, and back behind the stem; her outriggers were sticking in our side.

258 24th x-int. You say you saw the Katie when you left the island to take the Indiana shore, but did not whistle till you got to the Indiana shore?

A. I did not whistle till I crossed over. Well, I hadn't got over to the shore when I whistled, of course, because I straightened up the shore before I got to it.

25th x-int. Did you hear any whistle from the Katie?

A. No; she never blew any whistle at all till she was about sinking, and then I heard a faint squeel come out of her; it is the last one she ever made, and you could hardly hear it.

26th x-int. What course was the Katie taking when you first saw her?

A. She was going down the river, I suppose. I couldn't tell from the bulk whether she was sideways or straight in the river, or not. If she had had signal lights it might have told how she laid.

27th x-int. Was she above the point of the Indiana shore when you first saw her?

A. Yes.

28th x-int. How far?

A. Well, I don't know how far; she was fully a quarter of a mile from me when I blew the whistle.

29th x-int. Was she making for the island shore or for the Indiana shore when you saw her first?

A. I can't state which way her head was when I first saw her; I had no way to determine which end was foremost. I saw the bulk, but saw no lights at all.

30th x-int. How long was it from the time you first saw her till the boats came together?

A. Well, it was some considerable time; I couldn't say just how many minutes it was.

31st x-int. What speed was the Des Moines running at the time?

A. She was going up the river; I suppose 8 or 9 miles an hour; she was doing pretty good running; that current was pretty strong.

32nd x-int. What distance from the Indiana shore was it that
259 the boats were at the time of collision?

A. I think I was 40 or 50 yards from the shore; probably 50 yards—may be not so much.

33rd x-int. You say she run about half a mile down the island before she stopped, after she struck you?

A. No; she run right across towards the island, and then halloed for us to come alongside, that she was sinking. We came half a mile long down the island before they got the lights out; it might have been more or less.

34th x-int. Can you state how long, after the headway of the Des Moines was stopped, before the Katie struck her?

A. Well, when you stop a boat it takes some little time for the headway to run out.

35th x-int. Well, after the headway had run out?

A. Well, I think the headway had fully run out when I commenced backing.

36th x-int. Then can you say, in answer to the question, how long after the headway had run out before the Katie struck her?

A. Well, it was not very long. We had backed, I suppose, 4 revolutions before she hit us; it was not a great while.

37th x-int. If you went across from the island towards the Indiana shore, when you sounded your whistle, couldn't you still see the Katie up the river?

A. Yes; I could see the bulk up there, above me.

38th x-int. Whatever it was.

A. Yes; I could see the bulk.

39th x-int. Did you notice whether she was at your starboard or larboard, up the river, when you whistled?

A. Well, I know she was closer to the Indiana shore than otherwise, when I whistled, and was closer to the larboard than to the starboard.

40th x-int. Was she, at this time, [at your starboard,] or at your larboard when you blew your whistle?

A. Well, I think she was about the same distance from the
260 shore that would have throwed her about right ahead. I don't think she went out from the shore any from the time I saw her.

41st x-int. The collision took place, as I understand you, at the point of the bend opposite Diamond Island?

A. No; at the point opposite Diamond Island the bend would be on the other side.

42nd x-int. You say she was then actually in front of you when you sounded your whistle?

A. Well, she was up the river ahead; I can't say whether in front or not.

43rd x-int. Does not the river make a very sudden bend opposite Franklin, at that point?

A. Yes; the river makes a sudden bend there, but I, as being an up steamboat, had the preference to blow the whistle.

44th x-int. If she was immediately in your front when you blew your whistle, how could she be at your larboard and nearer the Indiana shore than you were, at that time?

A. I don't say she was. I said I thought she was about the same distance from the Indiana shore that I was; she was when she came into us. I couldn't tell, at that distance, and in the night, about how close she was to the shore when I first saw her, but from what I could see, she was nearer the Indiana shore than otherwise.

45th x-int. Your boat was not so badly damaged that she had to lay up for repairs before she went on?

A. No, sir. We went on without a stem band, though.

46th x-int. Had you ever piloted a boat along there before?

A. I never had charge of one myself; I had helped to take a boat along there before; I never was alone, though, till that time.

47th x-int. How long, previous to that time, had you run on a boat along that part of the river?

A. Well, I had been—I couldn't say, exactly, how long—prob-
261 ably a couple of months. I had been along there before.

48th x-int. What boat were you in then?

A. I went upon a stern-wheel boat—the Prairie Rose. I think it was the last boat I had been along on there before.

49th x-int. How long before was that?

A. A couple of months, I suppose.

50th x-int. In what capacity were you acting on the Prairie Rose?

A. I was helping to take her to Evansville.

51st x-int. What was your business on the boat?

A. I was helping. When I say helping to take her, I say I was helping to steer her there—pilot her there, whatever you may please to call it; that is what steamboatmen call it. If I go to take a boat to any place, I either take her myself or have a partner.

52d x-int. Where did you take her from?

A. Smith*field* [land.]

53rd x-int. How long before you took the Prairie Rose had you run any boat along there?

A. I didn't have any license on the Ohio River; I can't say how long it was; I think the last boat I steered on, before that, was the Hornet; I got on board the Hornet at Evansville.

54th x-int. When was that?

A. Before that, sometime; that was, I think, in the spring before.

Reëxamination by the libellant:

130th int. What do you say as to the point hereabout where the collision took place, on the map; what do you say as to this?

A. That is a pretty fair representation. There is West Franklin, and right down here is where the collision took place, right on the point at West Franklin.

262 130½ int. Is it a sharp point where the collision took place?

A. Yes, considerable.

131st int. Considerable of an elbow there?

A. Yes, considerable of an elbow there.

131½ int. Can you make a map?

A. No, sir; I never done anything in the way of drawing.

132nd int. Can you make a map to represent your own ideas of the river channel there?

A. Well, that is about as good as I could do, and may be better.

133rd int. You can't make a drawing?

A. No; I never did anything of the kind. If I was there I could point it out a great deal better than on that; I could show you the very place, within 10 feet of where she hit us.

Before signing the above deposition, the deponent desires to make the following corrections: In my answer to the 24th int., I do not wish to be understood as giving the position of Shawneetown Bar and Raleigh as being above West Franklin. In answer to 57th int., insert the word "in," after the word "tobacco," In int. 99th, the word "ascertain" should be "procure." In the 6th line of answer to 33rd x-int, the word "light" should be "line." In the 40th x-int., after the word "time," insert "at your starboard."

(Signed) R. A. DUNLOP.

John Manly.

The deposition of John Manly, on behalf of the respondent, taken before Sam'l C. Davis, jr., esquire, a notary public in and for the county of St. Louis, State of Missouri, at the city of St. Louis, in the county & State last aforesaid, on the 19th day of March, A. D. 1866.

263 JOHN MANLY, of lawful age, deposeth and saith, in answer to interrogatories, & cross-interrogatories, as follows, viz:

1st int. State your age, and residence, & occupation.

Ans. My age is 47 years; residence, Florissant, Missouri; occupation, pilot.

2nd int. How long have you been piloting?

Ans. About twenty years.

3rd int. Where have you been piloting?

Ans. On the Mississippi, Missouri, Illinois, and Cumberland Rivers.

4th int. Are you a licensed pilot, and since when?

Ans. I am licensed—have been for seven years.

5th int. What vessel were you on in November, 1864?

Ans. On the Des Moines.

6. State, in detail, the facts that you saw yourself in relation to the collision between the steamer Des Moines and the Katie, in November, 1864, on the Ohio River.

Ans. I was standing by the office, near the hall door that opens right in front; I heard the Des Moines's whistle twice, and I looked

A. Well, I know she was closer to the Indiana shore than otherwise, when I whistled, and was closer to the larboard than to the starboard.

40th x-int. Was she, at this time, [at your starboard,] or at your larboard when you blew your whistle?

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(Signed) R. A. DUNLOP.

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Ans. On the Des Moines.

6. State, in detail, the facts that you saw yourself in relation to the collision between the steamer Des Moines and the Katie, in November, 1864, on the Ohio River.

Ans. I was standing by the office, near the hall door that opens right in front; I heard the Des Moines's whistle twice, and I looked

ahead to see if I could see any light—saw none; I heard the engine bell of the Des Moines ring to stop her; I heard the backing bell ring to ship up to back; then I thought there was something ahead, mighty close; I went on the hurricane roof; I looked to see if I could see a light or anything. Second time I looked, I saw something coming right for us—looked black—could not see what it was. I saw a light within fifty feet of the Des Moines; I thought it was the fire doors. She came into us, and struck the Des Moines on the larboard bow; after she struck, I ran up in the pilot-house, and saw the Katie going right by our bow, and turning us right around. I told the pilot he had better stop her, as she was backing into the woods; to stop her, and
264 come ahead; I am speaking of the Des Moines. He stopped her and came ahead on her. The Katie was going by and blowing her whistle, a very long whistle, and then they hallooed to us to come to them, as they were sinking. We went to her and towed her to the island; they made her fast to the island. The Des Moines crew made her fast to the shore.

7. Where was the Des Moines—how near to the bank when you first came out?

Ans. Within 40 or 50 yards from the Indiana shore.

8. How was the Des Moines pointing with reference to the Indiana shore, when you first came out?

Ans. Pointing stright up the river.

9. After giving two whistles, where was her proper place?

Ans. The Indiana shore.

10. Did you hear any whistle or signal from the Katie before the collision?

Ans. I heard none.

11. After the signals by the Des Moines, state whether or not you paid any attention to the signals?

Ans. Yes, sir; I didn't hear any.

12. How far was the approaching object distant from the Des Moines when you first came on the hurricane roof?

Ans. Mighty close—fifty or sixty feet.

13. How far was the Katie when you first saw her?

Ans. That was the first time.

14. As the Katie passed the Des Moines, state whether you noticed the wheel of the Katie, and what it was doing?

Ans. It was turning—going ahead.

15. Where was the wheel?

Ans. Behind; a stern-wheeler.

16. State how it was going—fast or slow.

Ans. Pretty lively; not very slow nor very fast.

17. Describe, as near as you can, the position of the Katie, as she passed your boat, with reference to the river and to your boat.

265 Ans. As she struck she was kind of quartering down, when I first got into the pilot-house.

18. Which way was the bow quartering?

Ans. She was quartering to her larboard, going down towards the Kentucky shore.

19. As she passed how did she appear?

Ans. She went on past us towards the Kentucky shore, still drawing us round as she struck us, still quartering towards the Kentucky shore.

20. How far round did she draw you?

Ans. When I got into the pilot-house the Des Moines was right square across the river.

21. When the Des Moines was square across the river, where was the Katie, and how far off?

Ans. Out in the river, about fifty or a hundred yards off.

22. How far off from the Des Moines was the Katie when she blew the whistle after the collision?

Ans. About fifty yards.

23. Do you know the width of the river there?

Ans. I don't know; I am not acquainted in that river. It was pretty wide at that stage of water. The water was high.

24. How far did the collision take place from the Indiana shore?

Ans. Forty or fifty yards.

25. From the width of the river there, how far should a descending vessel have been from the Indiana shore?

Ans. She could have been 200 yards, if she had wanted to, from the Indiana shore.

26. At that stage of water, and at night, how far from the shore ought a descending vessel to have been?

Ans. Well, about a hundred & fifty yards from the Indiana shore.

27. How far was the stern of the Des Moines from Indiana shore when you told the pilot to stop backing?

Ans. Pretty close.

28. Suppose the Katie had answered the signal given by the
266 Des Moines, how far, at that place, ought she to have been from the Indiana shore?

A. About a hundred and fifty yards. I am not posted in that river, but I think she ought to have been that far out.

29. How long before the vessels actually came together was it that you heard the Des Moines' stopping bells ring?

Ans. May be ten minutes or five minutes, I could not tell exactly.

30. How soon after the stopping bells did you hear the bells to ship up for backing?

Ans. One or two minutes, I suppose.

31. How soon after did you hear the backing bells?

Ans. Pretty soon after.

32. State whether you noticed that the engines of the Des Moines were backing?

Ans. They were backing. I heard the escape and the noise of the water alongside, and I knew she was backing.

33. What was the cause of the Des Moines turning right around there?

Ans. The headway of the other boat.

34. Who was at the wheel of the Des Moines?

Ans. Mr. Dunlop. I did not know him before; that was the first time I saw him.

35. Where did he get on board the Des Moines?

Ans. He got on board at Smithland. I was on the boat at Smithland.

36. Did you notice Mr. Dunlop in piloting?

Ans. Yes, sir; I was up there with him after he left Smithland. He handled the boat pretty well, as far as could see.

37. How did he handle the Des Moines prior to, and at the time of, the collision?

Ans. He handled her well at the time of the collision.

38. What could he have done, that he didn't do to have avoided the collision?

Ans. Nothing that I know of, without he had landed her.

267 39. What ought the Katie to have done to have avoided the collision?

Ans. She ought to have had the signal lights up. She ought to have blown her whistle, to make known what side she wanted to take. Next she ought to have stopped. She ought to have backed. That's all she could have done that I know.

40. State what efforts, if any, the officers of the Des Moines made to get a licensed pilot at Smithland?

Ans. I don't know. They lay at Smithland an hour and a half or two hours. We were loaded with soldiers. I went on up to Louisville.

41. Where did they get a licensed pilot?

Ans. At Evansville.

42. Did you know the Katie?

Ans. Yes, sir; I had seen her before. She was an ugly-shaped boat. She had a chimney behind.

43. What was the course of the Des Moines along the shore before the collision, if you noticed it?

Ans. I had noticed it. I had been in the pilot-house about twenty minutes before the collision. She was running pretty well straight up the river, on the Indiana side.

44. How long had you been on the Des Moines before that?

Ans. About two months; we had been taken before that at Cairo, and sent to Nashville. I went up from Cairo to Nashville in charge of her as pilot. I was licensed from St. Louis to Nashville.

45. Where did the troops come on board?

Ans. At Nashville.

46. What was the position of the Katie when you first saw her coming down?

Ans. She looked to me as she was kind of quartering towards Kentucky shore, coming towards us.

47. Did you know the pilot of the Katie?

Ans. No, sir; I knew none of them.

48. Who was on watch at the time on the Des Moines?

Ans. The captain was on the roof; the clerk was up, too.

268 49. Did you see any one on the Katie?

Ans. I saw no one until she had gone by a piece.

50. Did you notice the damage done to the Des Moines?

Ans. Yes, sir; she knocked off two or three planks; knocked off the iron stem band. The outriggers of the Katie ran right through the planks of the Des Moines. I saw them sticking in there; we took them out at Cairo when the captain got her repaired there. One or two outriggers—they were driven like a wedge through the planks, they were two inches by three or four in size, about a foot long—they ran in nearly a foot or foot & half. The stem band was three or four inches wide and ten or twelve feet long; a pretty long piece of iron; it fell off in the water.

51. What would have been the effect if the Des Moines had been going ahead?

Ans. She would have struck us about the boilers. If we hadn't stopped and backed, she would have struck us about there, that is about the boilers.

Cross-examination:

When I first saw the Katie, I was on the hurricane roof. The Des Moines at that time was straight up the river.

1st int. Was there a bend in the river at that point?

Ans. There was a bend.

2. How far above the Katie was the bend?

Ans. I could not tell how far the bend was.

3. Was the course of the river changed, above or below the Katie from the point where you saw her?

Ans. I don't know.

4. Did you see the shore?

Ans. No, sir; the river was so high, I could not tell whether the river was straight; the water was high, clear over to the island.

269 The Katie was from fifty to sixty feet off when I saw her; she was taking the larboard side going down the Kentucky side; this was immediately before the collision.

5. Do you know anything of Diamond Island?

Ans. No, sir; I never saw it before.

6. Did you see it that night?

Ans. Yes, sir. I don't know the length of the island. It was good sized—pretty long.

7. What part of the island were the vessels opposite to, when the collision took place?

Ans. Near the head of the island.

8. In coming up the river, before the collision, for what distance had the Des Moines hugged the Indiana shore?

Ans. I had been in the pilot-house about twenty minutes before, and she was then heading up towards the shore; there was a little false bend towards the foot of the island, and we cut off this false bend and were heading towards the Indiana shore.

9. Had she, the Des Moines been running along the island shore at all?

Ans. No, sir.

10. Was the headway of the Des Moines run out at the time of the collision?

Ans. I think it was run out. The pilot was backing when I told him to stop her to keep from going into the bank. This was after the collision that I told him.

11. How far was your boat turned round by the Katie?

Ans. She was turned square across the river.

12. Did you go up the river that night on the Des Moines?

Ans. Yes, sir.

13. Did you see any bend at the end of the island?

Ans. I noticed a bend coming back. I took notice of it in the day time coming back. The bend would have been deeper at a low stage of water.

270 14. What fire was it you saw on the Katie?

Ans. I could not tell whether it was a fire or lamp, or what it was; it was towards the front of the boat. I did not see it until the time she was coming right into us. I could not tell whether it was on deck, or below; it throwed the light on the bulkhead. I believe it must have been below.

15. Did you notice how the Katie was injured?

Ans. No, sir; I took no notice. She was sinking when we got to her. She sunk to her boiler deck. She sunk about forty or fifty feet from the island, not very far; they put a line out.

16. How long after you heard the Des Moines blow the whistle, before you went on the hurricane deck?

Ans. Not right away. I could not tell how long. I listened for the whistle of the other boat, when I heard the Des Moines blow.

17. Did you go straight to the pilot-house when you went on deck?

Ans. No, sir; I saw the captain on the hurricane deck when I got up there. He was right forward on the hurricane roof.

18. Had the Des Moines changed her course from the time she whistled, until you got on the hurricane roof?

Ans. No, sir; she was heading up the river. She did not change her course at all prior to the collision, as far as I know.

Reëxamination:

1. The light you speak of (in ans. to 14 int. of cross-examination) as showing on the bulkhead, was on the bulkhead of what boat?

Ans. The bulkhead of the Katie, on her cabin.

2. (In ans. to 10th int. of cross-exam.) explain what you mean by, "I think the headway had run out;" what do you mean; don't you
271 know it was run out?

Ans. I could not tell at night; had it been daylight, I could have told whether it was run out.

3. Was the Des Moines backing or only the engines?

Ans. The engines were backing, and of course the boat was backing; when I got up on the roof, she was going back.

4. You say, in your cross-examination, she was taking the larboard side going down; what do you mean; the larboard side of which vessel?

Ans. The larboard side of the Katie.

5. When you say she was taking the larboard side of the Katie, what was her position in the channel?

Ans. She was quartering towards the Kentucky side—towards the island.

2nd cross-examination:

1. What was the strength of the current at that point of the river?

Ans. I was not posted in that river. I don't know how strong. I don't know how many miles an hour—not very strong current.

2. Was the Des Moines in the current?

Ans. Yes, sir; she was in the current.

his
JOHN + MANLY.
mark.

John Gillan.

The deposition of John Gillan, on behalf of the respondent, taken before Edmund T. Allen, esquire, a notary public in and for the county of St. Louis, in the State of Missouri, at the city of St. Louis, in the county & State last aforesaid, on the 24th day of August, A. D. 1867.

JOHN GILLAN, of lawful age, deposeth and saith, in answer to interrogatories & cross-interrogatories, as follows, viz:

272 I reside in St. Louis at the present time; have been here since the 29th of July last. I have been to the mountains this season; I lived at St. Joseph, Mo., last winter. I am 24 years of age; am a striker. I have been on the river, off and on, since 1859; when off the river I have been running a mill, as engineer. I was on the Des Moines at the time of her collision with the Katie, some time in November, 1864. I had been on the boat at that time about 2 months. I was assistant engineer or striker on board of her. I, and a man by the name of Charley Hicks were on watch at the engines at the time of the collision. I was at the starboard engine, and Hicks at the larboard engine.

Hicks died, I think, a year ago last spring. The Des Moines was going up the river—the Ohio River—at the time of the collision. When our boat first whistled, I was in the deck-room on watch at the starboard engine. There were two whistles given by the Des Moines at first, then after these two whistles, the stopping bell rung for both engines.

1st int. About how long was it between the time the boat whistled, and the time the bell rung to stop?

A. No, sir; I couldn't.

2nd int. After the bell rung to stop, what was done then?

A. The engines were stopped right away.

3rd int. And what next?

A. Then they rung to back. Then the engines were backed.

4th int. What occurred next?

A. Then the boats came together next.

5th int. Can you say how long it was between the time the signal was given to back, and the signal to stop?

A. No, sir.

6th int. How did the boat obey her engines?

A. She obeyed them well.

7th int. In what kind of order were the engines?

A. They were in good order, sir.

273 8th int. Where was Hicks all this time?

A. He was at the larboard engine.

9th int. Did you see the other boat from the time of the first whistle?

A. No, sir.

10th int. When did you first see the other boat?

A. After we had come together.

11th int. How long after?

A. I couldn't say.

12th int. Where were the boats when you first saw the Katie?

A. On our larboard side, along side of us; that was after we had gone up to the Katie.

13th int. State how that was that you didn't see the Katie at all, until then?

A. Because she didn't blow no whistle, and I didn't know what they were blowing the whistle and backing the Des Moines for, and she was on the larboard side, and I was on the starboard side, and I couldn't see her.

14th int. Which side did she come into you on?

A. On the larboard side.

15th int. Where was the break in your boat?

A. On the larboard bow.

16th int. Did you see the break after the collision?

A. Yes.

17th int. Was there any break on the starboard?

A. No, sir; there was a break right back of the stem, on the larboard bow, and in the stem.

18th int. What kind of a boat was the Des Moines in reference to obeying her engines?

A. She obeyed them well. Her engines handled her well.

19th int. How soon did your boat obey the signal to back?

A. Just as quick as an engine could be handled, the engines were handled.

20th int. How long was it before the collision that your boat commenced backing?

A. 3 or 4 backward revolutions.

274 21st int. Were these signals to stop and back, given on both engines?

A. Yes, sir.

22nd int. At the time of the collision what was your boat actually doing in respect to her motion?

A. She was backing—her engines were backing; I couldn't say what the boat was doing.

23rd int. You mean you didn't actually see the motion of the boat?

A. Yes; I know the engines were backing.

24th int. From your experience of that boat, how many revolutions of the engine would it ordinarily take to send her back?

A. I couldn't say.

25th int. You had stopped, I understand you to say, before the signal to back was given?

A. Yes.

26th int. Under these circumstances, how many revolutions would you think it would take to give a backward motion to the boat?

A. I think when she struck, her headway was run out.

27th int. You were not in a position, I suppose, to tell by the shore or water, or anything outside, what the actual motion of the boat was?

A. No, sir.

28th int. Did the Katie sink immediately? Describe what she did.

A. After we backed away from her, we came up alongside of her, took the passengers and crew off, and then put a line to her, and towed in ashore. I don't know how long it took us to take her in.

29th int. Could you say how long after the collision before she sunk?

A. No; I couldn't say how long it was.

30th int. Could you remember what distance she floated before she sunk?

A. No, sir; it was in the night. She floated quite a distance. We got a line to her, and towed her on toward the shore.

275 31st int. Did you see any of the officers of the other boat?

A. Yes.

32nd int. Whom did you see?

A. The engineer.

33rd int. Did you notice anything in particular in reference to him?

A. I noticed, I thought he was under the influence of liquor.

34th int. What made you think so?

A. He would come up on the foot-box where I was; came stumbling up there, and says he, "You have got an old Missouri River fellow that will knock the fur off any of them." He had reference to the Des Moines. She used to be a Missouri River steamer. I saw the pilot, and I saw them all, but it was some time afterwards.

35th int. Did you notice the pilot, particularly?

A. No, sir; I didn't pay much attention to him.

Cross-examination by libellant:

1st x-int. The Katie struck your boat on the larboard, did she?

A. Yes.

2nd x-int. Then she was directed to the Indiana shore?

A. Yes.

3rd x-int. She kept on, after the collision, down the river?

A. I couldn't say whether she kept on or not.

4th x-int. Didn't you go out on deck?

A. No, sir; I didn't.

5th x-int. You didn't see the collision?

A. No, sir.

6th x-int. How do you know she came on the larboard side, then?

A. She was laying to the larboard after we came up alongside of her, and I saw the mark on her bow; and if she had come up on the starboard side, I should have seen her, for I was on the starboard side?

7th x-int. How far were you from the Indiana shore at the time of the collision?

276 A. I couldn't say how far it was. I didn't go out on deck until we came up to her again, and at that time I couldn't say how far we were from the Indiana shore; I didn't look to see. It was not a very dark night.

8th x-int. You have forgotten a good many things that happened so long ago?

A. I suppose I have forgotten a good many things that took place then.

9th x-int. You stopped your engine when the bell rung?

A. Yes.

10th x-int. Did Hicks stop his?

A. Yes.

11th x-int. How do you know?

A. Because I saw him, and was looking right at him standing by my engine, and he was facing me.

12th x-int. Your boat didn't change her course at all?

A. I don't know that she did.

13th x-int. Did you see any boat when the Des Moines whistled?

A. No.

14th x-int. Did you hear any other whistle?

A. No, sir.

15th x-int. Whereabouts was it that you saw this pilot of the Katie?

A. Up in the cabin of the Des Moines?

16th x-int. Did you have any talk with him?

A. No.

17th x-int. Had you met him before?

A. No.

18th x-int. Do you know whether he was the pilot or not?

A. No, sir.

19th x-int. Was that after your boat started on up the river?

A. Yes.

20th x-int. How long after?

A. I couldn't say how long after.

21st x-int. Did you remain with him in the cabin?

A. No; I think I went to bed.

22nd x-int. You didn't know anything about the river at that point, I suppose—of the course of the river, whether there was an

277 island there?

A. I know there was an island right near there.

23rd x-int. Where was the Katie fastened after she met with the accident?

A. Fastened to the Indiana shore; I couldn't say positively, though. I saw her wreck afterwards, but I couldn't say where it was.

24th x-int. Did she call for assistance to your boat?

A. I don't know. We came right up to her assistance; we were backing when she struck us, and we stopped and came right up alongside of her.

25th x-int. Your boat turned round then?

A. No, sir; the Katie went down. We backed below her, I think,

and then came up and came alongside of her. She was right alongside of us when she sunk.

26th x-int. How far off?

A. I can't say.

27th x-int. Did you watch her motions after the collision took place?

A. No, sir, I couldn't; for I had to take care of the engine. We were backing, and came ahead again, and when we came ahead we came alongside of her.

28th x-int. You are certain your boat didn't turn round?

A. Yes.

29th x-int. You would have known it, being at the engines?

A. Yes.

30th x-int. What effect did this collision have on your boat at the time, did it turn her away from her course?

A. I cannot say; the other boat didn't pass on. She didn't sink right away, but we went back and came up to her again.

31st x-int. Then the Katie never got past you after the collision again?

A. No, I think not; not until we got a line to her.

32nd x-int. Where was the chief engineer at the time of the collision?

A. I cannot say where he was; he was on deck a couple of min-
278 utes afterwards.

33rd x-int. How long have you been a striker on a steamboat?

A. Off and on, since 1859, always as striker or engineer.

34th x-int. How many engineers were there on that boat?

A. Two engineers and myself.

35th x-int. Was Hicks an engineer?

A. Yes, sir.

36th x-int. You were just 21 at the time of this collision?

A. Yes.

37th x-int. Have you talked with anybody about your testimony in this case, since you came back from the mountains?

A. No, sir.

38th x-int. Havn't you told any one what you could testify to?

A. No, sir.

39th x-int. Havn't you been told what other men had testified to in this case?

A. No, sir. All I know, I made a statement in Louisville, me and Hicks, right after the collision, and I never knew anything more about it until now.

40th x-int. Before the inspection?

A. Yes.

41st x-int. Have you read that statement since?

A. I have heard it read.

42nd x-int. That is since you came back from the mountains?

A. Yes, sir.

43rd x-int. Whereabouts was it that you saw the engineer of the other boat?

A. Up on the foot blocks of the engine-room of our boat.

44th x-int. That was on the lower deck, was it?

A. Yes.

45th x-int. Did you have a talk with him?

A. Yes.

46th x-int. How long did he remain down there?

A. But a few minutes, and then he went up stairs.

47th x-int. Was anybody with him?

A. No, sir.

279 48th x-int. That was after the boat started up the river?

A. No; that was when we were alongside the boat.

49th x-int. Had he fallen in the river?

A. No, sir; I don't think he had.

50th x-int. Had you known him before?

A. No, sir; I had never seen him before.

51st x-int. And nothing passed between you except this remark.

A. That was all.

52nd x-int. Then he left?

A. Yes; I saw him up stairs afterwards.

53rd x-int. Did you have any talk with him then?

A. No.

54th x-int. What was he doing up stairs?

A. Talking and drinking round.

55th x-int. He drank after he came on your boat?

A. Yes, and I think he drank before he came on there.

(Signature waived.)

Timothy Crowley.

The deposition of Timothy Crowley, on behalf of the respondent, taken before L. L. Walbridge, esquire, a notary public in and for the county of St. Louis, in the State of Missouri, at the city of St. Louis, in the county & State last aforesaid, on the 6th day of April, A. D. 1867.

TIMOTHY CROWLEY deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

1st int. State your age, residence, and occupation?

A. I am about 28 years of age; reside at No. 1002 North 13th st., St Louis; am pork-house man at present.

2nd int. Do you recollect the collision between the Katie and the Des Moines?

A. Yes, sir.

3rd. int. Were you on either of the boats?

A. I was on the Des Moines.

4th int. In what capacity?

A. Acting as deck hand.

5th int. Where you—in what part of the boat—when you first saw the Katie?

280 A. I was standing on the starboard side, a little aft of the forward steps at the time the Des Moines' whistle blew.

6th int. How far off was the other boat then?

A. A good ways off, at the time she (the Des Moines) blew the whistles. A good ways.

7th int. Well, then go on from that time and describe what you saw?

A. I saw nothing, sir, but the other boat coming towards the Des Moines, down the stream, and at the time of the collision, I got out of my position and got hold of the starboard spar.

8th int. What was the appearance of the other boat as she came down?

A. She appeared mighty dark to me; couldn't see much about her; knew she was a steamboat by the appearance of her steam puffing off

9th int. Did you see any lights?

A. No, sir; I saw none at all.

10th int. Where did you go then?

A. When?

11th int. After you left this place?

A. I went to the starboard spar and got hold of it, and stood there till after the collision.

12th int. Just describe where that spar is?

A. On the starboard side of the boat, forward; at the forward end of the boat generally.

13th int. You could have a good view there?

A. Yes, sir; nothing to prevent me.

14th int. Describe how the other boat came?

A. Appeared to me she came kind of sideways into us—came into the larboard side of us.

15th int. How was she going when you came together?

A. Down stream.

16th int. As to whether she was going fast or slow?

A. Appeared to me she was going pretty fast by the way she made towards us.

17th int. Your boat had whistled. Did the other boat reply?

A. No, sir; no whistle that I could hear from her. Couldn't hear any.

281 18th int. After the two boats came together, how did they go?

A. Well, the Des Moines was turned kind of sideways by the force of the stroke and the Katie also rounded to and got her stem kind of up stream; not quite; kind of broadside the river.

19th int. How were both boats pointed?

A. One pointed up the river, and the other down.

20th int. Towards which shore?

A. Well, the Des Moines' bow pointed towards the right hand shore going up. Appeared so to me.

21st int. Which shore would that be?

A. I don't know, sir, exactly which shore it is now.

22nd int. Did you hear any bells?

A. I heard bells on board the Des Moines.

23rd int. What were they?

A. I can't exactly tell you, sir. The whistles I didn't understand very well.

24th int. Did you at any time see any lights on board the other boat?

A. I *seen* lights on her after she struck and she got her stern turned round, and we was back of her. I could see lights then.

25th int. Did you see any before the collision?

A. No, sir.

26th int. Were you in a position to see any lights if there had been any?

A. Yes, sir; if there had been any on her, I could have seen them. That is if they were in sight.

Cross-examination by the libellant:

1st x-int. You think if the lights were in sight you could have seen them?

A. Yes, I should think so.

2nd x-int. Did you look to see if there were any?

A. Yes.

3rd x-int. What part of the boat did you look?

282 A. All over the boat. The boat was making towards me, and I looked towards the boat and could see none.

4th x-int. Anybody tell you to?

A. No, sir.

5th x-int. How often did your boat whistle?

A. Twice.

6th x-int. How far was she from the Katie when she whistled?

A. A good ways from the Katie at this time. Appeared so to me.

7th x-int. How far?

A. I can't exactly say, sir.

8th x-int. How long did the Des Moines stay there after the collision?

A. I should imagine the Des Moines stayed up there between one and two hours.

9th x-int. What was she doing?

A. Towing, or rather trying to tow, the Katie into shore. I don't know which shore. I don't know the name of the shore myself; but she towed her into the shore.

10th x-int. Right-hand shore?

A. Right hand, I believe it is; I am not certain.

11th x-int. Going up or coming down?

A. Going up, I believe it is. I am not certain.

12th x-int. Don't you know what States are on either side of the river?

A. No, sir; I wasn't up that river very often.

13th x-int. Were you ever in Indiana?

A. Yes, sir; in part of it.

14th x-int. In Kentucky?

A. Yes, sir; in a part of Kentucky, too.

15th x int. You don't know whether it was the Kentucky or Indiana shore that they landed?

A. Well, I suppose if Kentucky run up on the right-hand side of the river, it must have been Kentucky, because I took it to be the right hand side of the river.

16th x-int. If Kentucky was on the right-hand shore then it was in Kentucky?

A. I am almost certain it was in the right-hand side that we shoved her in, but I will not be sure.

17th x-int. Any island about there?

A. I don't know, sir. The night was pretty dark and I could not see any island there; I heard them mention the name of some
283 island there.

18th x-int. You didn't land the boat on it?

A. Not that I recollect.

19th x-int. Where did you land the Katie?

A. Got her as close to shore as possible.

20th x-int. Did you land her on the island or the main shore?

A. I don't know what it was. She was shoved close to the shore, the captain said.

21st x-int. You would know the island when you see it?

A. No, sir; I don't believe I would.

22nd x-int. Don't you know what an island is?

A. I ought to, indeed, sir.

23rd x-int. What is it?

A. A small piece of land surrounded by water.

24th x-int. You think you wouldn't know the island if you saw it?

A. Yes, sir; I expect I would know the island. I probably might know the place she was sunk in, if I passed by it.

25th x-int. How far were the two boats from the shore when they came together?

A. I can't exactly tell you, sir.
26th x-int. Did you see the shore?
A. I went to shore, to get a line out for the Katie.
27th x-int. Did you land the Katie on the shore nearest to you?
A. I expect so, sir; it was the nearest I could see to us.
28th x-int. Did you land her at the nearest or furthest shore from where you struck?
A. It is very likely the captain put her to the nearest shore to him. I don't know, sir, which shore was nearest to us.
29th x-int. Where were you when the Des Moines whistled?
A. A little aft the forward steps on the starboard side.
30th x-int. You heard her whistle twice?
A. Yes, sir.
284 31st x-int. Did you look to see whether there was any boat?
A. I did.
32nd x-int. And saw this boat coming?
A. I saw the appearance of a boat coming down the river?
33rd x-int. Whereabouts did the Katie strike?
A. She struck a little aft the stem band on the larboard side.
34th x-int. How was the Des Moines pointed at that time?
A. Up stream, sir.
35th x-int. Directly up stream?
A. Up stream, sir.
36th x-int. How was the Katie pointed?
A. Pointed down stream.
37th x-int. Straight down stream?
A. Appeared so to me.
38th x-int. Not quartering?
A. She must have been quartering when she got close to us; when she struck us in that position she struck us a glancing stroke.
39th x-int. Came right at your broadside?
A. Not exactly broadside.
Signature waived.)

John Hoback.

The deposition of John Hoback on behalf of the respondent, taken before L. L. Walbridge, esquire, a notary public in and for the county of St. Louis, in the State of Missouri, at the city of St. Louis, in the county and State last aforesaid, on the 6th day of April, A. D. 1867.

JOHN HOBACK, of lawful age, deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

I am 51 years of age; reside in St. Louis; my occupation, watchman on the steamboat Des Moines; have been a river man, steamboating, 34 years. I have made my living that way for that length of time.
1st int. Were you ever on the steamboat Des Moines?
A. Yes, sir.
2nd int. Were you on her at the time of the collision with the Katie?
A. Yes, sir.
285 3rd. int. In what capacity were you on the boat, and how long had you been on her?
A. About 6 weeks, I think, as watchman.
4th int. Do you recollect the occasion of the collision?
A. Well, I don't know exactly. I was aft and coming forward, and

the engineer called my attention on the foot bench, the larboard engine. I stepped up to see what he wanted, talking a little bit, and I heard the alarm bell ring—no, I heard the whistle first blow. "Helloa, Charley, what's this?" says I; and I look out and seen this boat coming.

5th int. Where were you then standing?

A. I had then started forward; had got about half way along the boilers when I saw her.

6th int. Describe the appearance of the other boat?

A. I can't tell exactly what she was. She didn't look to me like a steamboat—more to me like a flat boat than anything I could compare her to. She had no lights to be seen, and coming right straight towards us.

7th int. Did you see any signal from the other boat?

A. None at all. I stepped a few steps further and heard the bell rung to back her.

8th int. Describe, as near as you can, her course?

(*9th int.*) She came kind of quartering towards us, and, as I thought, was going to strike us about the derrick; that is generally right by the steps, and I think by the action of stopping, losing her headway, that flanked her away, and she struck us a little further forward. She came round in a kind of circle, swinging both boats round, kind of quartering across the river.

10th int. How was the Des Moines going—describe her course?

A. She was going up the river, about the usual distance from the shore—probably 50 yards from the shore.

11th int. When she whistled, how many whistles did she give?

A. She blowed two whistles.

286 12th int. Did the other boat make any reply?

A. None at all. I took particular notice, because when the boat answers the whistle we know what they are going to do.

13th int. How long after the whistle blew was it before you heard the first bell?

A. Well, I guess it may have been a minute—may be two minutes.

14th int. After you heard the first bell of the Des Moines, what other signals, if any, did you hear?

A. I heard no signals till after her whistles were blowed, and her bell rung. Her bell rung immediately to back. There was no time between stopping time and to back.

15th int. By no signals you mean no whistles?

A. No whistles at all. I took particular notice about the whistles, because I understand the whistles as well as they do.

16th int. Describe what bells were rung?

A. The shipping-up bell, as we call it—to ship up and ready for backing. And then they rang the same bell to back her.

17th int. How soon did the shipping-up bell and backing bell follow after the first bell?

A. Well, it wasn't more than a minute. I walked from alongside the boilers to the derrick as quick as I could walk.

18th int. What did the Des Moines do when these shipping-up and backing bells were rung?

A. They rung to back, and they backed her as quick as they could. By the time that she lost her headway, and began actually to back, I think the other boat was on her.

19th int. How was the Des Moines going at the time of the collision?

A. Going up stream.

20th int. I mean what was her actual motion at the time?

A. She had stopped, and her headway was just about run out.

287 21st int. Did you notice how near to the shore the Des Moines was then?

A. I think she was about 50 or 60 yards, not further.

22nd int. After she had backed, did you notice how near she came to the shore in backing?

A. No, sir; she swung off from the shore.

23rd int. Which way did her head go?

A. Her head swung round, kind of quartering across the river.

24th int. What was the position of the Katie?

A. When the Katie struck her she swung round the same way—her head in the same position of ours.

25th int. Where did the Katie strike you?

A. She struck us a little aft the stem, kind of a glancing lick on the larboard bow; knocked the stem band off. I caught the stem-band and tried to tie it; made it fast, and lost it afterwards; after I made it fast I lost it.

26th int. What occurred after the collision?

A. Well, they halloed for help; and we had got off probably 20 yards, may be not so much. We came alongside of her as quick as we could, got the people off of her, and what freight was lying around the forecastle, dry goods boxes, and carried it aboard the Des Moines; got a line out to her hog chains on the hurricane roof, and then commenced going ahead on her, and *showing* her broadside in towards the shore, and got everything off her we could.

27th int. After the collision, when you were up by the Katie, did you notice any light anywhere about her then?

A. I noticed no light till her engines came round, and we could see right in the engine-room. After she swung round we could see the lights there.

28th int. When was this swinging round?

A. When they struck.

288 29th int. Immediately after they struck?

A. Yes, sir; after they came together.

30th int. How were you loaded—the Des Moines?

A. We had nothing but soldiers. We had a regiment of soldiers aboard. I think the 7th Pennsylvania.

31st int. How long was it before you went up the river?

A. I judge we was there an hour; probably an hour and a half with her.

32nd int. What doing?

A. Getting her to shore, and making her fast.

33rd int. That is the Katie?

A. Yes, sir.

Cross-examination by the libellant:

1st x-int. How far was the Katie off from your boat when you first saw her?

A. Probably she was 20 or 30 yards; probably 40; not over that.

2nd x-int. They were just about coming together when you first saw her?

A. Yes, sir; but a short distance apart.

3rd x-int. You were satisfied they must come together?

A. Yes, sir; I stood on the forecastle till I could have stepped on the Katie. I sung out to the soldiers to get away, that she was going to knock our spars away. I run up three or four steps, thinking they were

going to fall. But, losing our headway, she struck further forward than I thought she would when I see them coming together; probably six or seven feet further.

4th x-int. How was your boat pointed when they got together?

A. Pointed right up the river, the usual distance from the shore.

5th x-int. Your boat did not change her course at all?

289 A. No, sir; not at the time they came together, that I could see.

6th x-int. Was the Katie going immediately down the river?

A. Yes, sir; close to the shore; looked as if she aimed to go on the inside of us.

7th x-int. Between you and the shore?

A. Yes, sir.

8th x-int. How was she pointed?

A. Down stream.

9th x-int. She did not turn any?

A. She did not, to the best of my knowledge, till they came together. Then they both swung round quartering in the river; came broadside after they struck.

10th x-int. You were struck on the larboard bow?

A. Yes.

11th x-int. She did not make any hole in you?

A. Knocked the stem band off and shattered that.

12th x-int. Your boat is larger, is it?

A. Yes, a good deal larger.

13th x-int. Did your boat sit up higher on the water than the Katie?

A. She is higher than the Katie. The Katie was loaded, and we were light, with the exception of a regiment of soldiers.

14th x-int. Where were you standing when the boats came together?

A. I was standing right by the derrick, and these soldiers crowded up on the forecastle, and I sung out to them to get out of the way, that they would get hurt. I run three or four steps up the steps for fear the derricks would come down.

15th x-int. You did not look to see whether she had lights on her at that time?

A. I did not see any.

16th x-int. Did you look?

A. Yes, sir; looked for the signal lights the first thing.

17th x-int. What did you look for them for?

A. Because it is necessary to look for lights when boats come

290 together. I saw the boat, but no lights.

18th x-int. What induced you to look for lights?

A. It is customary for everybody to look for a light about a steamboat, particularly signal lights.

19th x-int. Were you not thinking about their coming together?

A. I knew they were bound to come together; lights wouldn't prevent them.

20th x-int. She didn't sink your boat?

A. No, sir; she didn't, but shattered it pretty well.

21st x-int. What damage did she do to your boat?

A. Shattered her stem; knocked her stem band off.

22nd x-int. Did your boat damage her?

A. Yes, or she done it herself. You can take as you like. We came together in that shape.

23rd x-int. How long had you been on the Des Moines?

A. About six weeks.

24th x-int. Where had she come from then?

A. Nashville.

25th x-int. Did you stop anywhere?

A. Stopped at Smithland.

26th x-int. Did you get a pilot there?

A. We had the pilot that took us up the Cumberland. There was no pilot to be got, only this one, as they said. We had our St. Louis and Cumberland pilot.

27th x-int. You had no Ohio River pilot?

A. We had the Cumberland River pilot.

28th x-int. Who was he?

A. Dunlop.

29th x-int. Did he get aboard at Smithland?

A. No; he had been to Nashville with us. He took us up the Ohio River to Evansville, and there we got a pilot.

30th x-int. He wasn't licensed?

A. That is what I understood, that he wasn't a licensed pilot. There was no other to be had.

31st x-int. How far were the two boats from the Indiana shore
291 when they came together?

A. Not over 50 or 60 yards, at the furthest.

32nd x-int. Where did you take the Katie?

A. We shoved her right into the Indiana shore, and made her fast to the Indiana shore.

23rd x-int. Did she sink?

A. Yes, sir; she was down to the bottom, I guess, when we left her. We left her there on the Indiana shore; and more than that, we could get nobody to help make her fast, that belonged to the boat.

34th x-int. What did you fasten her to?

A. To a big tree with a hawser, on the roof.

35th x-int. You are sure it was on the Indiana shore you fastened her?

A. Yes, sir.

Reëxamination by the respondent:

34th int. When you state that the pilot wasn't a licensed pilot, what do you mean?

A. For Cumberland River. He had licenses, he told me himself, for the Ohio River, but they had run out.

35th int. Do you know yourself, whether or not Dunlop had piloted a great deal in the Cumberland and Ohio?

A. I can't say; for I hadn't steamboated round that country much.

36th int. You don't know whether he had a license or not, do you?

A. No, sir, I do not.

37th int. This statement that he hadn't a license, as well as the other statement that he had previously had a license, you both gather from hearsay?

A. Yes, sir.

38th int. In other words, you heard from others that he hadn't a license at that time, but that he had a license previously, for the Cumberland and Ohio River?

A. Yes, sir.

(Signature waived.)

292 *Edw'd P. Inhoff.*

The deposition of Edward P. Inhoff, on behalf of the respondent, taken before Abraham Dehuff, esq., a justice of the peace in and for the county of Cumberland, in the State of Pennsylvania, at Carlisle, in said last mentioned county, on the 22nd day of March, A. D. 1867.

EDWARD P. INHOFF, of lawful age, deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

In the latter part of November, 1864, the Seventh Regiment Pennsylvania Cavalry was ordered from Nashville to Louisville. Six companies of the regiment were placed on the steamer "Des Moines." My company was one of these. On the night of the collision between the "Des Moines" and the "Katie," I was sitting near the clerk's office on board the "Des Moines," It was after "taps." I heard our boat, the "Des Moines," whistle twice. I heard no signal from the "Katie," and thought we were going to land. Immediately afterwards the bells of the "Des Moines" rang to back the engine. The clerk was in his office. He and I both ran upon deck, near the pilot-house. When I came upon deck, I saw another boat coming right down upon us. I saw no lights on her, except the light from her cabin windows. The boats struck about a minute or two after I reached the deck, as near as I can remember. Both boats recoiled. Our boat, the "Des Moines," had her head thrown towards the Kentucky shore; the Katie in the opposite direction. After the collision, the "Katie" signalled, and there was a call from her that she was sinking, and to come to her assistance. The "Des Moines" fastened on to her, took off her passengers, and towed her near the Kentucky shore. We were coming up stream, and the "Katie" was going down. From the time the bells rang to reverse the engine, until the boats struck, there was time enough to break the headway of the
293 "Des Moines." We were going against the current. I am positive we had lights out on the "Des Moines." The officers of the "Des Moines" were steady, careful men. I noticed that particularly.

(Signed) EDWARD P. INHOFF.

Cross-examined by William Kennedy, esq., appearing for plaintiffs:

The collision occurred on the Ohio River, near Diamond Island. Can't tell how wide the river is there; it was too dark to see either shore. The river was very high. Don't know how wide the channel is. Cannot say how many times the bell in engine-room rang. Think it was about four minutes from the time the bell rang, until the boats struck. The whistles blew about a minute before the bell rang, as near as I can remember. I noticed there was no signal light on the "Katie," but cannot tell whether my attention was called to the fact by others, or whether I looked particularly myself, first. I can not tell the speed of the "Des Moines" prior to the blowing of the whistle, or at the time of the collision. I know we were not going very fast when we struck, if we were going at all. Can not say whether the "Des Moines" was in her proper place in the channel, or not. The "Des Moines" was struck to the left of her bow. I think we were a considerable distance from the Kentucky shore. It took considerable time to tow the "Katie" over. I think the "Katie" was moving when the collision occurred. I can not say how fast.

EDWARD P. INHOFF.

Henry H. Hicks.

The deposition of Henry H. Hicks, on behalf of the respondent, taken before Edward T. Allen, esquire, a notary public in and for the
294 county of St. Louis, in the eastern district of Missouri, at the city of St. Louis, in said eastern district, on the 6th day of May, A. D. 1867.

HENRY H. HICKS, of lawful age, deposeth and saith, in answer to interrogatories & cross-interrogatories, as follows, viz:

1st int.. State your residence, age, and occupation?

A. I reside in Peru, Ill.; am 27 years of age, and an engineer.

2nd int. How long have you been on the river?

A. Nine years.

3rd int. Were you ever on the steamboat Des Moines?

A. Yes, sir.

4th int. When were you on her?

A. It has been three years ago.

5th int. Were you on her at the time of the collision?

A. Yes, sir.

6th int. Did you see anything of the collision yourself?

A. No, sir.

7th int. Where were you at the time?

A. In bed.

8th int. Did you see the break or the place made in the Des Moines afterwards, by the collision of the boats?

A. Yes, sir.

8th int. When was it that you saw it?

A. It was after the collision.

10th int. How soon after?

A. About two days. That was the time we repaired her. I guess it was about that time.

11th int. You mean about 2 days after it happened?

A. Yes.

12th int. Where did you examine it?

A. At Cairo.

13th int. Why did you examine it?

A. I worked on her.

14th int. When she was being repaired?

A. Yes.

15th int. Describe the place and the indications, as they were at that time.

A. Her bow iron was knocked off; the drift-bolts that held the iron on, was bent to the starboard—bent over towards the starboard, and the sheet iron that was on the hull of the boat was somewhat damaged.

16th int. How was it damaged?

A. Well, it was tore—scratched.

17th int. On what part of the boat was this injury?

A. On the bow

295 18th int. Which bow?

A. Forward bow.

19th int. Which side of the boat?

A. On the larboard side.

20th int. Was any injury done to the planking—to the side part of the boat?

A. Yes, sir; there was a hole knocked in her, I should say about two feet or three feet above the water-line.

21st int. Where was that; what part of the boat?

A. On her bow.

22nd int. Which bow?

A. The larboard bow.

23rd int. What injury, if any, was done to the starboard bow of the boat?

A. None at all, as I know of.

24th int. Did you notice the starboard side?

A. Yes.

25th int. Couldn't you see any injury?

A. No, sir.

26th int. Have you had much experience in repairing boats?

A. Considerable.

27th int. How long have you been engaged at that?

A. About 9 years.

28th int. Suppose one boat strikes another, head on, what part of the striking boat would be injured; or on what part of the boat that strikes the other, would the injury be perceived, and what would be the appearance of the injury?

(Objected to by the libellant.)

A. I couldn't tell.

29th int. This iron that you describe on the boat, how does it run—on what part of the boat—describe the position of the iron on the boat, and what kind of iron it is?

A. Something similar to a bow, that fits the bow—the bow stem.

30th int. How high does it extend on the boat?

A. It runs up as high as the bow stem.

31st int. And how low down does it go?

A. Some runs back 3 feet, and some more.

32nd int. How was it on this boat?

296 A. I should say hers run back about three feet.

33rd int. How thick is the iron?

A. Well, this in her, was about 2½ inches, half-round.

34th int. What do you mean by that?

A. Just the same as you take a circle and saw it in two.

35th int. What kind of a boat was the Des Moines, as to size and stoutness?

A. She has not a very full head. I don't know exactly her beam. I can tell pretty nearly what tonnage she was. I suppose she was about somewhere in the neighborhood of 600 or 700.

36th int. How was she built; whether stoutly or otherwise, for a boat of that size?

A. She was built very firm.

Cross-examination:

1st x-int. What is you business; a ship-carpenter?

A. Engineer.

2nd x-int. What had you to do with the repairs of the boat?

A. I worked on her at the same time. I was engineer of her.

3rd x-int. When she was injured?

A. Yes, sir; I put her iron on—helped—and put on her sheet iron.

4th x-int. Were you on board of her at the time the accident took place?

A. Yes.

5th x-int. Where were you at the time of the accident?
A. In bed.
6th x-int. When did you first learn of the accident?
A. The captain woke me up—came and told me of it. I was awake at the time. I got up and came down stairs.
7th x-int. You went out then?
A. Yes.
8th x-int. Did you see the Katie?
A. Yes.
9th x-int. Where did she sink?
A. On the larboard side of us. She was on the larboard side of us when she was sinking.
10th x-int. Was you boat pointed up stream at the time, or down stream?
297 A. I couldn't say. I don't know anything about the river up there in the dark.
11th x-int. Did you know on which side the Kentucky shore was?
A. I could tell if her head was up stream. I couldn't tell whether she was head up stream or head down stream.
12th x-int. But you know she was on your larboard side?
A. Yes.
13th x-int. Did she sink right there when you saw her?
A. Yes, sir; she was sinking at the time. Her head was down. Her engines—I don't think they were stopped. Her wheel was rolling over at the time when I came down.
14th x-int. She was sinking, though?
A. Yes, sir; her head was down.
15th x-int. Wasn't she fastened to the shore in any way?
A. Not as I know of.
16th x-int. Didn't they fasten her to the shore at any time when you saw her?
A. I couldn't say.
17th x-int. What became of your boat after you got up and went out?
A. Went up the river.
18th x-int. Didn't she stop to help the Katie any?
A. Yes.
19th x-int. What help did she give her?
A. Went alongside of her, and took all her people off of her.
20th x-int. And then left her there to sink?
A. No, sir; they hung on to her, and tried to lighten her.
21st x-int. Did they lighten her?
A. I guess they did. They got a line out, I believe. I don't know anything about that.
22nd x-int. You kept up the balance of the night, didn't you?
A. Yes.
23rd x-int. Don't you know what became of the Katie?
298 A. All I know, they went alongside of her and stayed with her until they got everything off of her, and I heard them trying to get out a line. I don't know whether they got out a line or not. My business wasn't out forward.
24th x-int. You don't know what they did with the Katy, then?
A. No, sir.
25th x-int. How far up the river did your boat go?
A. To Louisville.
26th x-int. How long did she stay at Louisville?

A. I couldn't say.
27th x-int. Didn't she go above Louisville?
A. No, sir.
28th x-int. You are sure of that?
A. Yes, sir.
29th x-int. Did you remain on her all the time?
A. Yes.
30th x-int. And you don't know how long she stayed at Louisville?
A. I couldn't say.
31st x-int. What time did she get to Louisville?
A. I couldn't tell you that.
32nd x-int. In the night or the daytime?
A. She got there in the daytime.
33rd x-int. The day after this accident happened.
A. I couldn't say that.
34th x-int. This accident happened below Louisville, on the Ohio River?
A. Yes.
35th x-int. How far below Louisville?
A. I don't know.
36th x-int. Did you stop at any town before you got to Louisville, going up?
A. Stopped at several towns. I don't know what towns she did stop at myself.
37th x-int. Were you on watch at any time, as engineer?
A. Yes.
38th x-int. Can't you recollect how long you stayed at Louisville after you got there?
A. I could not.
39th x-int. Where did the boat go from Louisville?
A. To Cairo.
40th x-int. How long did it take her to go to Cairo?
A. Well, I couldn't say. I don't know.
299 41st x-int. Do you know how many days?
A. About 18 hours; somewhere in that neighbourhood.
42nd x-int. You remained on her all the time, did you?
A. Yes.
43rd x-int. As engineer?
A. Yes, sir.
44th x-int. What was the reason you didn't do these repairs at Louisville?
A. I don't know. That wasn't my business,
45th x-int. You don't know, then?
A. No, sir.
46th x-int. How long did she lay at Cairo before anything was done towards repairing her?
A. I don't know that, either—just the exact time.
47th x-int. Was there a carpenter on board the boat?
A. Yes, sir.
48th x-int. Did you do the repairs on her?
A. The iron work.
49th x-int. That was all that you did?
A. Yes, sir.
50th x-int. Now, what iron work did you do?
A. Well, I helped put the sheet-iron work on her, and helped put the

bow iron on; made the drift bolts to put it on with; and the sheet iron that was damaged on the larboard side.

51st x-int. How far from the bow?

A. Right at the bow.

52nd x-int. Isn't that the point of the bow?

A. Not exactly.

53rd x-int. How many inches—how many feet from the point of the bow?

A. It extended back probably 3 feet. The iron wasn't damaged that far back, but we took off that much iron to get the balance on in good shape.

54th x-int. Were the timbers injured any?

A. The bow timber was.

55th x-int. How much?

A. I couldn't say how much.

56th x-int. How far from the stem were the timbers injured?

A. It was her bow stem that was injured.

57th x-int. Any other part of her timbers?

A. Her planking was knocked off. I couldn't say how large it
300 was—probably three feet from the water's edge; a hole knocked in her.

58th x-int. Did it let in the water?

A. No, sir.

59th x-int. How big a hole was that?

A. Well, I couldn't say. I don't remember now.

60th x-int. How far was that hole from the stem?

A. Well, I couldn't say.

61st x-int. Was it 2 or 3 feet?

A. Well, it was in the neighborhood of 3 and 4 feet, I should say.

62nd x-int. You are sure it was on the larboard side?

A. Yes, sir.

63rd x-int. How long has it been since you helped do these repairs?

A. It has been about three years.

64th x-int. How long did you remain on the Des Moines after that?

A. I couldn't say.

65th x-int. Did you continue on her after that at all?

A. Yes, sir.

Reëxamination:

37th int. You say that the boat sunk when you first saw her?

A. The boat was sinking. She was down. She was down to her boiler deck.

38th int. How long after the collision did you come out on deck.

A. Well, I couldn't say.

39th int. When the two boats came together, were you awake?

A. No, sir. I heard the jar, but I didn't think anything of it at the time.

40th int. Then you stayed in your berth some time after the jar?

A. Yes, sir.

41st int. Was one of those irons gone off of the boat?

A. Yes.

42nd int. Which of the irons was that?

A. The bow iron.

43rd int. Where does the bow iron go? Describe that.

A. The bow iron is right in the bow of the boat.

301 44th int. It was the bow iron that was knocked off?

A. Yes.

45th int. Do you know what became of that bow iron that was knocked off?

A. I do not.

(Signature waived.)

John M. Little.

The deposition of John M. Little, on behalf of the respondent, taken before Geo. W. Bailey, esquire, a notary public in and for St. Louis County, Missouri, at the city of St. Louis, in said last-mentioned county and State, on the 22nd day of April, A. D. 1867.

JOHN M. LITTLE, of lawful age, deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

My name is J. M. Little. I reside in St. Louis County. By occupation, I am a pilot on the river at present, and sometimes I am captain. I have been on the river ever since 1847. I have been on the Mississippi, Illinois, Ohio, and Cumberland rivers. I know Robert A. Dunlop.

Ques. Do you know what the reputation of Robert A. Dunlop is as a pilot and a river man?

(Objected to as incompetent by libellants' counsel.)

Ans. I know it to be good. I have known Dunlop since the spring of 1865. I have known him personally. I have heard him spoken of ever since the war commenced.

Ques. What has been his reputation, if you have known him as a pilot and a river man, from that time?

(Objected to as incompetent by libellants' counsel.)

Ans. It has been very good. I became acquainted with him in the spring of 1865, in the st'b. Des Moines. She was helping me up
302 the Cumberland. I had command of the st'b. "Kellog." He was pilot on the "Des Moines" at that time. The Des Moines left me at Clarksville, & came back to Smithland. When I came back there I hired Mr. Dunlop on the "Kellog." We made that trip and two others to Cairo, and from Cairo to Nashville. I hired him as a pilot. He was one of the pilots, and I stood watch with him.

Ques. Was he a licensed pilot at that time?

Ans. I never saw his license, but he told me so.

(Ans. objected to by libellants' counsel.)

The reason why I considered him a licensed pilot was because I saw him afterwards as pilot on a passenger boat, and I know he would not have gone on these boats without a license. When I had him with me I considered him a number one pilot. I never saw better work done on the river than he done for me. We had opportunities, all the time he was with me, to see how he managed the boat.

Cross-examination by libellants' counsel:

I had heard of him as pilot before the spring of 1865. I never had any acquaintance with him, any more than to know him by sight.

(Signed) JOHN M. LITTLE.

John L. Murphy.

The deposition of John L. Murphy, on behalf of the respondent, taken before Edmund T. Allen, esquire, a notary public in and for the county of St. Louis, in the State of Missouri, at the city of St. Louis, in the said last-mentioned county and State, on the 14th day of May, A. D. 1867.

JOHN L. MURPHY, of lawful age, deposeth and saith, in answer to interrogatories & cross-interrogatories, as follows, viz:

I reside in Carondelet, in the State of Missouri; by occupation am a ship carpenter. Am now on the Sucker State.

1st int. Were you ever on the Des Moines?

303 A. Yes. I was in bed at the time of the collision. I repaired the boat afterwards. I was carpenter of the boat until several trips afterwards. The boat was at Cairo when I repaired her. We finished the trip to Louisville, and came back to Cairo. The damage to the Des Moines was slight. The damage was forward on the larboard side, right by the stem. She lost her stem band, and there were three pieces of plank broke out on the larboard side, right by the stem. It injured the stem but a little—shove it a little to the starboard; that is, jammed it that way a little.

2nd int. How far aft of the stem on the larboard side did the injury extend?

A. Not over two feet but we had to run it back three or four make a decent job of it.

3rd int. Did you notice any rubbing?

A. No; nothing injured whatever on the starboard side; we had a dock under her.

4th int. Did you notice any rubbing on the larboard side?

A. It was considerably rubbed on the nosing; I couldn't say how far back; I don't think over 10, 15, or 20 feet. It was just marked a little by the stem, but there was a little of the paint rubbed—a little mite. There was nothing whatever broke, but those three little pieces.

Cross-examination:

1st x-int. You say the Des Moines was rubbed on the larboard side 10 or 15 feet back?

A. I don't think it was further than that.

(Signature waived.)

James Summerwell.

The deposition of James Summerwell, on behalf of the respondent, taken before George Fisher, esquire, a notary public in and for the county of Alexander, in the State of Illinois, at the city of Cairo, in said last-mentioned county and State, on the 2nd day of May, A. D. 1867.

JAMES SUMMERWELL, of lawful age, deposeth & saith, in an-
304 swer to interrogatories as follows, viz:

Int. 1st. What is your name, age, occupation, and place of residence?

Ans. My name is James Summerwell; age, forty-one years; occupation, that of a ship-carpenter; residence, Cairo, Illinois.

Int. 2nd. Are you acquainted with the parties, plaintiff & defendant, in this suit?

Ans. I am not acquainted with any of the plaintiffs. I am acquainted with the defendant.

Int. 3rd. Did you, in the autumn of 1864, do any work of any kind as carpenter for the defendant, Peter Conrad; if so, state what the work was, and when and where it was done, as near as you can?

Ans. I did work for him as carpenter. I put a bow dock under the steamer Des Moines for him, and, to the best of my recollection, it was in the autumn of 1864. The work was done here at Cairo.

Int. 4th. Who employed you to do this work?

Ans. Capt. Peter Conrad, the defendant, employed me to do the work.

Int. 5th. Describe fully and particularly the work that you were employed to do on the steamboat Des Moines, first stating fully the appearance and condition of said steamboat before the work was begun?

Ans. The stem band was knocked off the stem of the boat, and the stem was shoved to the starboard side. The stem was shivered & split, so that it was necessary to take out a part of the old stem and put it in anew. I put in nearly all the stem anew. It was taken out below the water line with the boat light. It was so badly split that I could not make a good job of it without doing so. Three planks were stove in on the larboard side of the boat top on bow.

Int. 6th. State whether or not there was any injury on the starboard side of the boat?

Ans. There was no damage on the starboard side that I saw.

305 Int. 7th. According to your best recollection, was the boat injured otherwise than as you have described?

Ans. She was not.

Int. 8th. Did you make the repairs required in consequence of these injuries?

Ans. I did not make them all. I superintended all the carpenter work.

Int. 9th. State what your skill and experience as a ship-carpenter is?

Ans. I have been working as a ship-carpenter for the past twenty years. During the years 1863, 1864, & 1865, my time was devoted entirely to repairing steamboats.

Int. 10th. From the appearance of the boat and your knowledge of her condition, please state how the said damage was most probably caused. State fully and particularly.

Ans. From the appearance of the Des Moines she must have been struck on her larboard bow, or she must have struck some object on that bow. It could not have been a direct straight-forward stroke that caused that damage, in my opinion; the planks on the larboard side having been stove in and the stem having been shoved to the starboard side, it would seem impossible that the damage was done by a direct stroke.

(Signed) JAMES SUMERWELL.

James J. Seibert.

The deposition of James J. Seibert, on behalf of the respondent, taken before William V. Archer, esquire, a commissioner of deeds for Missouri, for and in Philadelphia, in the State of Pennsylvania, at the city of Philadelphia, in said last-mentioned State, on the 31st day of August, A. D. 1866.

JAMES J. SEIBERT, of lawful age, deposeth and saith, in answer to interrogatories & cross-interrogatories, as follows, viz:

Examined by Jno. H. Rankin, esq.

306 Ques. What were you doing during the month of November, 1864?

Ans. I was an officer in the United States service, commanding the 7th Regiment of Pennsylvania Cavalry of U. S. Volunteers. I left Philadelphia about 8th of November, and went to Nashville to join my regiment, then in Georgia, where I supposed it would be. While in Nashville I received information that the regiment and the whole division were on their way to Nashville, to proceed from thence to Louisville, Kentucky; I remained there for several days, until the regiment arrived, with the exception of a few detachments; I then took command of the regiment at Nashville, and received orders to proceed with my regiment to Louisville for the purpose of reorganizing and remounting; I put a portion of the regiment—say about 700 men—on board of the boat—the "steamer Des Moines." The boat was designated by the quartermaster of the river transportation at Nashville. I had more men than I could accommodate on that boat—that is, the Des Moines—and another boat was employed, which took about 300 men, & under my order were under command of Major W'm H. Jennings. The boat which I had command (the steamer Des Moines) left Nashville about dark. We went down the Cumberland River, and, I think it was about 11 o'clock at night, we stopped until the next morning, in consequence of the darkness of the night. We started in the morning, stopped once or twice between there and Smithland, for coal. After stopping at Smithland for several hours, we proceeded up the Ohio. As near as I can remember, between 10 and 12 o'clock at night, I was sitting in the ladies' cabin with Major Andreas, Lieut. E. W. Rank, and Lieut. Charlie Bryant, and a few others sitting around, whose names I do not recollect—whilst sitting there, we felt a very severe shock; all of them jumped up but myself. I remained
307 in my chair just long enough for me to say that they had gone into port for the night, and I would not allow it. Whilst I was speaking I saw the pipes fall and the stove shake, (it was cold enough to have a fire.) I shouted to some of the men and ordered them to fix up the stove-pipe; didn't stop however, but rushed out on the left side of the deck facing the Indiana side. When I came out the vessels were only 40 or 50 feet apart, or so far as the shock separated them. I should judge the Des Moines, when I came out, was about 30 yards from the Indiana shore; instead of being in a line up the river, the bow of the boat had been thrown quartering across the current towards the Kentucky side. I came out on deck about the middle of the boat on the left hand side facing north; the "Katie" was to front and left of us, not in a direct line in the river, but the front of her thrown towards the Kentucky side; the distance of the boats from one another when I came out was only such a distance as the shock would produce. I did not see the vessels when coming together. The Des Moines went to the relief of the "Katie," as soon as she could get her engine reversed *at* the signal for help was given. I could see the "Katie" was very near and that something was wrong, tho' the night was dark. As quick as possible the Des Moines reversed engines. We had been running very slow before the collision. After signal of distress, immediately after the collision, and as soon as the machinery could be reversed, our boat stopped but long enough, and moved up sideways to the sinking boat. I then run from the lower deck, where I had gone, to the upper deck. The boats had not got quite close to each other, but close enough for one of the passengers to jump from the "Katie" to the "Des Moines." I learned from him there was a number of women and children, passengers on board the "Katie." I
308 then called out and directed them all to keep quiet; that there was plenty of time to get them all off. The officers and men of my boat went below and threw across a plank from my boat to the "Katie,"

and took off all the passengers safely. In the meantime I was on the upper deck on the side where the "Katie" lay with a mass of my men; I saw the fires burning very brightly in the furnaces of the Katie. I was then standing right opposite the engine-house, on my boat; she was a small boat and we could look right down; the boilers seemed to be full of steam; the engineer or any other officer was not about—no one in sight, I mean. Fearing an explosion from the chill, as the water was gradually approaching the boilers, I ordered my men to leave that side of the boat to avoid the danger from the explosion. I then made inquiry for Morris O'Neill of my regiment, a practical and experienced engineer, for the purpose of sending him over there for the purpose of opening the valves and letting the steam out of the boilers. I did not find him until after the boilers had got under water. I sent a man to the pilot-house and ascertained there was no one there; the boats were only a few feet distant. I could see into the pilot-house and could see no pilot there. From the time I first went out I could see none of the officers of the "Katie" on board. The engine-room was exposed to my view, and I could see no officer on duty there. When I speak of the engine-room I mean that part where they fire up and regulate the steam. When the passengers were all off I instructed one of my men to let down the caps and let the oxen out; which was done. We remained up alongside the "Katie" & got off some baggage. When we left her she was on shore as close as we could bring her. I looked for the signal lights on the "Katie" and there was none. The first thing that attracts attention
309 whenever they are seen, are the signal lights. Before the collision I heard the whistle of the Des Moines three or four or five times; she had been running slowly before the collision; I heard no signal from the Katie until after the collision; the cabin was quiet and there were but few persons about, and I could have heard a signal. I think we done all we could for the "Katie;" I did not see the officers or crew of the "Katie" to know them. The officers of the Des Moines done all they could to save the boat and those on her. I done all I could myself. I don't understand the meaning of the signal of steamboats—I mean the running signals. On this voyage, the officers of the Des Moines comported themselves as well as the officers of any steamboat I had ever been on. The Katie did not sink immediately after the collision. I think it was from fifteen to twenty minutes after. Immediately before the collision I heard some bells ringing below, and as I stated, she was running slow. The time consumed before the collision was about the same and the signals the same as the time and signals consumed and given by a steamboat going into a pier. I was a lawyer by profession before the war; I have always resided with my father—he removed to Philadelphia in 1861. I am a single man.

Cross-examination by Hiram K. Hazlett, esq're, one of the libellants:

Ques. Did you leave Nashville on the Des Moines?

A. Yes, sir.

Ques. Was the Des Moines fully equipped with a crew when she left there?

A. Yes, sir.

Ques. Do you know who was steering the Des Moines when she run into the "Katie?"

Ans. I do not know the name of any one *one* on board except of my own regiment.

310 Ques. Do you know whether the pilots and engineers were duly licensed or not?

Ans. I do not.

Ques. How high was the Des Moines between the two decks?

Ans. I do not know. It was a pretty high stairway; it might have been 8 or 10 feet.

Ques. Was she higher between the two decks than the Katie was?

Ans. Yes, sir; she was much higher.

Ques. How do you know there was no signal-lights on board the "Katie?"

Ans. Because, just as I have stated, we looked for them and saw none, and our attention may have attracted by the remarks of the officers and men of the Des Moines.

Ques. How could you see the fire-doors of the "Katie" from off the boiler deck of the Des Moines when you were so much higher up?

A. It was just because I was higher; I could see them when I looked down.

Ques. I understood you took all the passengers off the "Katie." Where did you deliver them?

Ans. I do not remember the name of the place. I suppose the Des Moines remained at that place not over an hour. I now remember—the name of the place was Evansville.

Ques. Did or did not the Des Moines employ a pilot there?

Ans. I don't know. I had business which took me ashore, and when I got back the boat was ready to start.

(Signed) JAMES J. SEIBERT.

311 DEPOSITIONS TAKEN IN THIS CAUSE SINCE THE RENDITION OF THE INTERLOCUTORY DECREE THEREIN.

James Rees.

The deposition of James Rees, on behalf of the respondent, taken before Gilbert M. McMaster, esquire, a notary public in Pittsburg, State of Pennsylvania, at the city of Pittsburg aforesaid, on the 28th day of March, A. D. 1868.

JAMES REES deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

I live in Pittsburg, Penn.; am an engine builder; age is 46 years. I have been interested in building steamboats in the port of Pittsburgh for myself and others for the last fifteen or twenty years. In the year 1864, I was interested as builder and owner in twelve steamboats built at the port of Pittsburgh. I am acquainted with pl'ffs; but not acquainted personally with def't; saw steamboat Katie frequently while she was at the w'arf, building at Pittsburg. She was a low-water boat, built expressly for running on *shole* water, and had a short cabin; was different from ordinary boats, having one chimney only. She had two boilers placed in the boat aft of midships; chimney came up through the hurricane roof, aft of pilot-house. She had two thirteen-inch cylinders there and one-half feet stroke. Shaft and crank, rough iron; length about 135 to 140 feet keel; width from 28 to 30 feet beam; was about from three and a half to four feet deep. She had a doctor, nig'er, and steam-power capstan. She differed from other boats only in this, in having her boilers set aft of midships instead of forward. One other boat was built similar to this, called the "Carrie," some six months
312 previous, by the same owners. I thought this was not any improvement in building of boats, but an injury to them. The

Katie should have, in 1864, in my opinion, cost from twenty to twenty-one thousand dollars, including everything ready to leave port. Part of the machinery of the Katie, after she was wrecked, was brought to Pittsburgh, and by me placed on another boat called the Lewellen, at the instance of W'm J. Kuntz and Capt. Hiram K. Hazlett. The worth of this old machinery was about twelve hundred dollars; it might have been a saving to them of about eighteen hundred dollars. The part of the old mach'y used by me on the Lewellen, consisted of one cylinder, the main shaft, one piston and slides, and bed-plates for one cylinder, one piston rod & T head, cam-roads, part of cams and frames, part of doctor engine, heaters, and part of copper pipes & two boilers, part of the nigger and part of capstan.

Cross-examined by Thomas C. Layear, esq.:

The Katie was built in summer of 1864. When I estimate her cost at from twenty to twenty-one thousand dollars, I have ref/erence to prices during the summer of 1864. Prices continued to advance during 1864, and the year following. I could not say the am't of advance in three or four months, of price, without referring to my books.

(Signed) JAMES REES.

W'm Chambers.

The deposition of William Chambers, on behalf of the respondent, taken before Gilbert M. McMaster, esquire, a notary public in the city of Pittsburg, State of Pennsylvania, at said city of Pittsburgh, on the 28th day of March, A. D. 1868.

313 WILLIAM CHAMBERS deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

Live in the city of Pittsburg, Penn.; am aged 67 years; occupation, clerk for J. H. Douglass, and so employed in 1864; J. H. Douglass did the blacksmith work for the steamboat Katie; it cost in all six hundred and seventy-three dollars and seventeen cents. She was finished *in* July 26th, 1864. She was built by Hiram Hazlett and W. J. Kountz. I am not sure whether it was Mr. Kountz or Hazlett who made the contract; both men were about the boat when she was building. I have been connected with the building of steamboats since the year 1845.

Cross-examined by T. Layear, esq.:

We were engaged on this boat about two months. Prices were advancing all the time she was building, and afterwards, but not long after. The prices in the fall of 1864 were at the highest, so far as our work was concerned. While she was building the advance in prices was ten per cent. fully.

(Signed) W'M CHAMBERS.

W. B. Scaife.

The deposition of W. B. Scaife, on behalf of the respondent, taken before Gilbert M. McMaster, esquire, a notary public in the city of Pittsburgh, State of Pennsylvania, at the said city of Pittsburgh, on the 28th day of March, A. D. 1868.

W. B. SCAIFE deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

I reside in Pittsburgh, Penn.; in 1864 was engaged in tin, copper,

&c.; I remember of the steamboat Katie being built in Pittsburg,
314 1864; we furnished her with one fifteen-feet transverse, stern-patent life-boat, on the 22nd day of August, 1864; price, one hundred and fifty dollars. I think it was ordered by Capt. W'm J. Kountz.

Cross-examined by Mr. Layear:

This life-boat was delivered August 22nd, 1864; it had been ordered some time before this. I do not remember how long. One hundred and fifty $ was the price agreed on when ordered. The same class of boats the next year, when prices were the highest, were worth one hundred and seventy-five dollars. And prices were continually on the advance until that time.

(Signed) W. B. SCAIFE.

Samuel Morrow.

The deposition of Samuel Morrow, on behalf of the respondent, taken before Gilbert M. McMaster, esquire, a notary public in the city of Pittsburg, State of Pennsylvania, at said city of Pittsburg, on the 31st day of March, A. D. 1868.

SAMUEL MORROW deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

I reside in the city of Pittsburgh, Penn.; am fifty-two years of age; am a member of the firm of Fitzsimmons & Morrow, tin & coppersmiths; am acquainted with pl'ffs, but not with defendant. I recollect the steamboat Katie, built at the port of Pittsburgh, 1864. Our firm, Fitzsimmons & Morrow, furnished the cook-stove, tin, and iron work for the Katie, amounting to six hundred and forty-nine ($649 60) dollars and $\frac{60}{100}$. The work was done in July and August, 1864. Capt. W'm J. Kountz contracted for the work.

Cross-examined by Thomas C. Layear, esq.:

The work was done a short time after it was ordered. It was
315 done and furnished at current rates or prices; no special contract. Prices for such work and materials were on the advance at this time. We have a bill of items of the goods furnished to the Katie on our books, and of the work done. The items are quite numerous.

Direct resumed by John Barton, esq.:

Our bill was paid to us by either Capt. Kountz or Capt. Hazlett. (Complainant's att'y objects to the foregoing testimony on the ground that the bill of items and of work and materials should be furnished, and also that the cost thereof at the date when rendered and done are no evidence of the value of the same at the time of the collision in question.)

(Signed) S. MORROW.

Andrew Hartupee.

The deposition of Andrew Hartupee, on behalf of the respondent, taken before Gilbert M. McMaster, esquire, a notary public in the city of Pittsburg, State of Pennsylvania, at said city of Pittsburg, on the 31st day of March, A. D. 1868.

ANDREW HARTUPEE deposeth and saith, in answer to interrogatories and cross-interrogatories, to wit:

I reside in the city of Pittsburgh, Penn. Am an engine builder. Am forty-six years of age. Am a member of the firm of Hartupee & Co., engine builders in the city of Pittsburgh, Penn. I remember the steamboat Katie. I think she was built in the summer of 1864. I believe W'm J. Kountz built her—he contracting with us for the mach'y. We finished the boilers, engines, and all the mach'y, and put on board all in working order. Our contract price for engines and mach'y was nine thousand ($9,000) dollars. Was paid by Capt. W. J. Kountz. She was finished in the latter part of the summer of 1864.

316 Cross-examined by T. C. Layear, esq.:

This contract was made in the spring; I think in March or April of 1864. Prices were the highest at this time. The time this contract was made prices were at the highest. From that time, in our business, they went down. That was the highest price I ever got for that sized engine.

(Same objection as above by pl'ff att'y.)

(Signed) A. HARTUPEE.

Louis Weiderhold.

The deposition of Louis Wiederhold, on behalf of the respondent, taken before Gilbert M. McMaster, esquire, a notary public in the city of Pittsburg, State of Pennsylvania, at said city of Pittsburg, on the 31st day of March, A. D., 1868.

LOUIS WIEDERHOLD deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

I live in Allegheny City, Penn. Am thirty-three years of age. Upholsterer by occupation. Am a member of the firm of Holtzman and Wiederhold. I do remember the steamboat Katie, built at the port of Pittsburgh, Penn., in the summer of 1864. Our firm, Holtzman and Wiederholt, furnished her upholstery work, bedding, beds, &c. I think it was Capt. Kountz contracted for this work. Our bill for this work amounted to one thousand and forty-four dollars and forty-two cents. The charge on our books bears date August 20th, 1864, being made when everything was furnished to the boat. One payment was made by Capt. Kuntz and the other by Mr. Weaver.

Cross-examined by Thomas C. Layear, esq.:

When the contract was made I am unable to say, but our contracts are generally made one or two months beforehand. Our prices were agreed upon when we made this contract. Prices were on the
317 advance at this time. These goods principally consisted of cotton goods. They were advancing all of the year 1864. Two months later, after we furnished the Katie, I find by our books that goods had advanced from fifteen to twenty per cent. Each item of this bill is charged separately on our books, and the above sum is the ag're-gate of our bill, including the several items.

(Complainant's counsel objects that the bill of items should be produced.)

(Signed) LOUIS WIEDERHOLD.

Thomas Davage.

The deposition of Thomas Davage, on behalf of the respondent, taken before Gilbert M. McMaster, esquire, a notary public in the city of Pittsburg, State of Pennsylvania, at said city of Pittsburg, on the 31st day of March, A. D. 1868.

THOMAS DAVAGE deposeth and saith in answer to interrogatories and cross-interrogatories, as follows, viz:

That he resides in the city of Pittsburgh, Penn. Am aged sixty-eight years. Am a block and pump maker. Am a member of the firm of Davage and Roberts. Remember that we did work for a boat called the Katie in 1864. We furnished her blockwork and rigging in general. I am under the impression that Capt. Kountz ordered the work; it was either he or Capt. Hazlett. The amount of our bill was one hundred and sixty-two dollars and ninety cents. It was charged on the 4th of August, 1864. I think it was Capt. Hiram K. Hazlett who paid the bill.

Cross-examined by T. C. Layear, esq.:

The work had been done prior to this date. It was not done
318 under any special contract, but at our usual rates. Could not tell whether prices advanced after this time without refer'ing to my books, but my impression is that they did.

(Signed) THO'S DAVAGE.

W'm Nelson.

The deposition of William Nelson, on behalf of the respondent, taken before Gilbert M. McMaster, esquire, a notary public in the city of Pittsburg, State of Pennsylvania, at said city of Pittsburg, on the 1st day of April, A. D. 1868.

WILLIAM NELSON deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

Live in Allegheny County, Penn. Am aged 45 years. Am a steamboat painter & glazier by occupation. I am acquainted with Capt. Hazlett. Do not know the other parties to this suit. I did the painting on the Katie, glazing, &c., and found the materials. Capt. Hiram Hazlett contracted with me for this work. It was charged Aug't 23d, 1864, which was the time the work was finished, but do not know how many months we were at it. The work amounted to eleven hundred and eleven dollars & fifty cents, this embracing all the painting, glazing, glass & paint, &c. Capt. Hiram Hazlett paid me for the work.

Cross-examined by Thomas C. Layear, esq.:

Could not tell when the contract was made, whether it was one month, six months, or a year before the work was finished. The sums charged for this work were the current prices at the time the contract was made, and not at the time when the work was done. Prices were all the time on the advance, and every thing in my line of business was going up.

Direct-resumed:

I suppose that she was contracted for about two months before
319 she was finished.

(Signed) WILLIAM NELSON.

W. F. Richardson.

The deposition of W. F. Richardson, on behalf of the respondent, taken before Gilbert M. McMaster, esquire, a notary public in the city of Pittsburg, State of Pennsylvania, at said city of Pittsburg, on the 1st day of April, A. D. 1868.

W. F. RICHARDSON deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

I reside in Allegheny County. My age is 44 years; and by occupation am a steamboat carpenter & joiner. Remember the steamboat Katie. Capt. Hiram Hazlett was the reputed capt. while she was building. Isaac Gullet put the cabin on her. Abraham Fryer and myself were chosen to value and appraise the cabin. I was chosen by Capt. Hiram Hazlett; Fryer by Mr. Gullett. As near as I can recollect, (I have not the figures here,) it was near two thousand dollars; it might be a little under or a little over. That included all the joiner work on the boat, and not the ship-carpenter work.

Cross-examined by T. C. Layear, esq.:

I merely state this from my recollection. It would not vary more than one hundred dollars either way. We went over the thing and examined it closely. This apprais'ment was made according to the prices at the time the boat was finished. Mr. Gullett's bill was before us, showing the dates.

(Signed) W. F. RICHARDSON.

John B. Dallas.

The deposition of John B. Dallas, on behalf of the respondent, taken before Gilbert M. McMaster, esquire, a notary public in the city of Pittsburg, State of Pennsylvania, at said city of Pittsburg, on
320 the 1st day of April, A. D. 1868.

JOHN B. DALLAS deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

That he was a book-keeper for Long & Duff, who were boat furnishers of the city Pittsburg, Penn. They supplied the outfit of the steamboat Katie, amounting to thirteen hundred & seventy-seven dollars and twenty-two cents, commencing June 6th, 1864, and finishing about Aug't 26th, 1864.

Cross-examined by Thomas C. Layear, esq.:

This outfit consisted of lamps, rope, canvas, queensware, &c. The bill consisted of a very large number of items. They were furnished at the current rate of prices at the time of delivery. Things at this time were at about the highest. Some things may have advanced after that date but I am not certain.

(Signed) J. B. DALLAS.

Isaac Gullett.

The deposition of Isaac Gullett, on behalf of the respondent, taken before Gilbert M. McMaster, a notary public in the city of Pittsburg, State of Pennsylvania, at said city of Pittsburg, on the 10th day of April, A. D. 1868.

ISAAC GULLETT deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

I reside in Allegheny City, Penn. Am a steamboat joiner, carpenter, and cabin builder. Am fifty years of age. Have been a cabin builder for thirty-two years. Remember a small boat built at the port of Pittsburgh, in the summer of 1864, called the Katie. She was built by Capt. Wm. J. Kountz. I built her cabin, including all her materials,
321 lumber, hardware, & all pertaining to her cabin. The contract was made with me by Capt. Kountz. I was to build her at current prices, charging for all material and labor at cost prices, and ten per cent. added for my profit for superintending. The whole amount was nineteen hundred dollars ($1,900) and some odds. I do not remember the odd dollars; think it was seventy-two dollars. Capt. Kountz paid me for the work. I think William Latta built the hull.

Question. Have you a general knowledge of the prices, cost, and value of building different parts of steamboats in 1864?

Answer. Some parts I have. In building hulls I have not, further than what I heard stated—heard these statements.

Question. Did you ever hear Capt. Hiram K. Hazlett, Adam Weaver, or W'm J. Kountz state how much they paid for the hull of the Katie?

Answer. I never did.

Question. What was the Katie actually worth as a steamboat?

(Libellant's counsel objects to the question as incompetent and not the proper mode of arriving at the true value of the boat.)

Answer. To the best of my knowledge I will answer it; all I can do. I suppose she would be worth fifteen thousand dollars.

Question. For what reason do you put that value on her?

Answer. From the general knowledge I have of the cost of machinery, cabin building, hull, painting, outfitting, &c.

Question. What is your opinion of the peculiar manner in which the Katie was constructed and arranged; did it add to or diminish from her value as a steamboat?

(Thomas Layear, esq., objects to the foregoing question as incompetent, irrelevant, &c.)

322 Answer. Well, diminished.

Question. State, if you remember, who did the Katie's ship-carpenter outfit, to wit, plank way, plank spars, fenders, &c.—the carpenter work not embraced in the cabin contract?

Answer. Capt. Kountz had a man on board to do that work. It was not given out to any shop.

Question. Can you state what was the reasonable and fair cost and value of that part of the work and materials for the Katie in 1864, when it was done?

(Thomas Layear, esq., objected to for same reason as above.)

Answer. My knowledge of that is that that portion of the work and material would cost about two hundred dollars, not including the work, block, &c., done by Davage & Roberts.

Question. Taking the Katie all together, was she a strong, stanch craft, or weak and light?

Answer. She was not what I would consider a strong boat.

Question. How would she compare with an ordinary river or coal barge, with an engine on the stern, as to size, construction, strength, and durability?

(Objected to as irrelevant.)

Answer. She would not compare at all. Her hull was very much like one of our river barges, but had a square stern.

Cross-examined by Mr. Layear:)

Do not recollect what the contract for the work was made—mean the current prices when the contract was made. I have no date of the time when the work was finished, as my books were burnt. Prices were on the rise at this time. I know they were.

323 Question. You have stated, in your examination-in-chief, that you valued this boat at fifteen thousand dollars, from your general knowledge of machinery, &c., please state how you acquired that general knowledge?

Answer. I acquired that knowledge from the fact that I have been an owner in some four steamboats; my knowledge embraced the whole boat, every part of her. It was prior to the time the Katie was built, some two years before, that I purchased these boats.

Question. What was the peculiar manner in the construction and arrangement of the Katie, which you say diminished her value?

Answer. Well, the greatest objection to the construction of the Katie was the placing of the boilers aft midship—the tendancy of which was to load her at the stern.

(Signed) ISAAC GULLETT.

Edward D. Leezer.

The deposition of Edward D. Leezer, on behalf of the respondent, taken before Charles J. Potter, esq're, a notary public in and for the county of Vanderburgh, State of Indiana, at the city of Evansville, in said last-mentioned county and State, on the 2nd day of March, A. D. 1868.

EDWARD D. LEEZER deposeth and saith, in answer to interrogatories, as follows, viz:

Ques. 1st. What is your name, age, occupation, and place of residence?

Ans. Edward D. Leezer; I am twenty-five years old; wrecker by occupation; Evansville.

Ques. 2nd. What business are you following at the present time?

Ans. Saloon business.

Ques 3rd. Do you expect to be hereafter employed by the libellants, or either of them in this action in any capacity?

Ans. I do not at present; no, sir, not a particle; I have no ex-

324 pectation of employment by any of the parties to this suit.

Ques. 4. State whether or not you are the same Edward D. Leezer, who testified on behalf of the libellants in this case before S. K. Leavitt, notary public, at this office, on the 28th day of February, 1868.

Ans. Yes, sir; I am.

Ques. 5th. What would have been the value of the services of yourself, the crew of your bell-boat and submarine armor and your bell-boat itself, in raising the "Katie," in case the water had not risen as you speak of in your former deposition, and you had raised the "Katie?"

(This question objected to by libellant's attorney.)

Ans. It is hard to tell. We had a contract to the effect that if we raised the "Katie," we were to have so much.

Ques. 6th. How much were you to receive if you raised the "Katie," and how much were you to get, if anything, in case you did not succeed; and was the contract in writing?

Ans. We were to receive five thousand dollars for raising the boat, placing her on the ways, and repairing the break caused by the collision. There was a written contract, but my copy was lost, when my

boat was sunk near Padukah, two years ago. At the time the contract was made Captain Hazlett kept the original, and I had a duplicate.

Ques. When was the contract made?

Ans. I cannot tell exactly, somewhere in December, 1864, within a week of Christmas. I cannot answer exactly. It was sometime before Christmas.

Ques. 8. Did you begin work on the wreck immediately after the contract was made?

Ans. Yes, sir.

Ques. 9. What would you have made on your contract if the river had not risen, and if you had succeeded in your first attempt to raise the "Katie?"

325 (This question objected to by libellant's attorney.)

Ans. I cannot tell.

Ques. 10. How much did you expect to make at that time, and what was your estimate at that time of the profit you expected to realize on the job?

(This question objected to by libellant's attorney.)

Ans. I wouldn't contract to raise or wreck any wreck without realizing from $\frac{1}{3}$ to $\frac{2}{3}$ profit.

Ques. 11. Where was your bell-boat, and in what engaged during a month previous to the time of making the contract you have spoken of?

Ans. I think we had concluded the wrecking of the machinery of the Melrose, and laid up the boat on the Indiana side, and sent the machinery to Cincinnati.

Ques. 12. How long had your bell-boat lain up before you undertook to raise the "Katie?"

(This question objected to by libellant's attorney.)

Ans. I can't tell exactly. It was in the neighborhood of a month, more or less; I can't state positively now, as my books and papers are all lost.

Ques. 13. At the time you finished wrecking the Melrose, and laid up your bell-boat, was the Katie lying in the river, sunk?

Ans. No, sir; I don't think she was.

(Signed) E. D. LEEZER.

Joseph F. McReynolds.

The deposition of Joseph F. McReynolds, on behalf of the respondent, taken before Charles J. Potter, esquire, a notary public in and for the county of Vanderburgh, State of Indiana, at the city of Evansville, in said last-mentioned county and State, on the 3rd day of

326 March, A. D. 1868.

JOSEPH F. MCREYNONDS deposeth and saith, in answer to interrogatories, as follows, to wit:

Ques. 1. State your name, age, occupation, and place of residence?

Ans. Joseph F. McReynolds; thirty-seven years of age; steamboating, and I live in Evansville, Indiana.

Ques. 2. Are you acquained with the parties to this action?

Ans. No, sir; I am not.

Ques. 3. Do you know anything about the value of steamboats? If so, state your means of knowledge.

Ans. Yes, I have some idea of the value of steamboats from what they have been selling at, but I never bought or sold any myself, except lately; I have become mixed up with one a little.

Ques. 4. State, if you know, the steamboat called the "Katie;" if so, state when you knew her, and what became of her.

Ans. Yes, I knew her, I think, in 1863 or 1864, when she run here; I am not positive about the date. She was sunk in the Ohio River at some point below here—where, I do not know.

Ques. 5. Do you know the value of the Katie at the time she was sunk? and if so, state what that value was.

Ans. I do not know what she was worth, and I don't think there is any man in the country knows unless he was interested in her.

(Signed) J. F. McREYNOLDS.

W'm A. Shepard.

The deposition of William A. Shepard, on behalf of the respondent, taken before Gilbert M. McMaster, esquire, a notary public, in the city of Pittsburg, State of Pennsylvania, at said city of Pittsburg, on the 11th day of May, A. D. 1868.

327 WILLIAM A. SHEPARD deposeth and saith, in answer to interrogatories, as follows, viz:

I reside at Pittsburgh, Penn; am aged about thirty-three; sec'y of the Citizens' Insurance Co. of Pittsburg. I know the parties to this suit. I know Capt. W. J. Kountz. I recollect a little boat called the Katie, built here in the summer of 1864. She left in August. She was insured in our office. Paper marked "A," is a copy of the policy issued by our company on the Katie. Capt. W. J. Kountz applied for and took out the insurance. She was after reported to us lost, and we paid the loss, forty-two hundred and fifty dollars, to Capt. Kountz. The amount of our risk was five thousand dollars. We paid cash thirty-seven hundred and fifty dollars; surrendered premium note, five hundred dollars, & were allowed credit of our interest in the wreck, (one-fourth part thereof,) seven hundred and fifty dollars, which makes the five thousand dollars. In our adjustment, the wreck was valued at three thousand dollars. We gave her the privilege of ten thousand dollars additional insurance. She had but one chimney, & that is all I recollect about her. The adjustment was made Jan'y 28th, 1865.

(Signed) W'M A. SHEPARD.

Exhibit "A" accompanying deposition of W'm A. Shepard.

"A."

No. 3419.] [Vessel.

Citizens' Insurance Company of Pittsburg.

Sum insured, $5,000.	On account of Capt. W'm J. Kountz.	Premium,	$500 00
Valuation, $20,000.	Loss, if any, payable to him.	Policy,	$

328 This policy of insurance witnesseth that the Citizens' Insurance Company by these presents does cause Capt. W'm J. Kountz to be insured in the sum of not exceeding five thousand dollars, lost or not lost, upon the stern-wheel steamboat "Katie," wherever she is in safety at noon of the twenty-fourth day of August, 1864, and from thence to noon of the twenty-fourth day of August, 1865, when this policy shall expire, unless sooner terminated or made void by conditions

hereinafter expressed, with permission to navigate the Ohio River and its tributaries.

WAR CLAUSE.—And it is hereby agreed that assurers are warranted free from claims for loss or damage arising from war or civil commotion, or from piracy, seizure, riot, sequestration, capture, or detention, or the consequences of any other hostile act of the Government or people, person or persons of any State of this Union, or of any State or States claiming to have seceded from this Union, or any military or usurped power whatsoever.

And it shall be lawful for the said boat, during said time, to proceed to, touch, and stay at any ports or places on said waters which may be convenient for the transaction of business, or if thereunto obliged by stress of weather, or other unavoidable accidents, without prejudice to this insurance. And in case of any loss or misfortune resulting from any peril insured against, the party insured engages for himself or themselves, his or their factors, servants, or assigns, to use every practicable effort for the safeguard and recovery of said steamboat, and, if recovered, to cause the same to be forthwith repaired; and, in case of neglect or refusal on the part of the assured, his agents or assigns, to adopt prompt and efficient measures for the safeguard and recovery thereof, then the said insurers are hereby authorized to interpose and recover the said steamboat, and cause the same to be repaired for account of the
329 assured, to the charges of which the said insurance company will contribute in proportion as the sum herein assured bears to the agreed value in this policy; but in no case whatever shall the assured have the right to abandon until it shall be ascertained that the recovery and repairs of the said steamboat are impracticable, nor sell the wreck, or any part thereof, without the consent of this company; and the acts of the assured or assurers, or of their joint or respective agents, in preserving, securing, or saving the property insured in case of danger or disaster, shall not be considered or held to be a waiver or acceptance of abandonment.

The company having been paid the consideration for this insurance at the rate of ten per cent. per annum, the said steamboat hereby insured being valued at twenty thousand dollars, touching the adventures and perils which the said insurance company is contented to bear and take upon them under this policy—they are of the lakes, rivers, canals, fires, and jettisons that shall come to the damage of the said vessel, or any part thereof—excepting all perils, losses, or misfortunes arising from or caused by the gross negligence, recklessness, or willful misconduct of the owner, master, officers, or crew, of the said steamboat; or by theft, barratry, robbery, or other legally excluded causes: or any damage that may be done by the vessel hereby insured to any other vessel or property; or any loss or damage arising from or occasioned by said boat being unduly laden; or by the bursting of boilers, the collapsing of flues, or the derangement or breaking of the engine or machinery, or any consequences resulting therefrom, unless the same be caused by unavoidable external violence.

330 And, in case of loss, such loss to be paid in sixty days after proof of loss, proof of interest, and adjustment exhibited to the assurers, the amount of the premium. or the note given for the premium, if unpaid, and all sums due from the assured to the company when such loss becomes due being first deducted; and all sums coming due being first paid or secured to the satisfaction of the assurers. But no loss or average shall in any case be paid under five per cent. on the agreed value in this policy, unless general.

And it is hereby agreed that this policy shall become void if any further insurance has been or hereafter shall be made on said steamboat which, together with this insurance shall exceed the sum of fifteen thousand dollars, or upon any assignment thereof, unless notice is given at the office of the company, and the same be endorsed hereon by the secretary or other authorized officer of the company.

It is also agreed that the assured shall not abandon as for a total loss on account of the said boat grounding or being otherwise detained; or in consequence of any loss or damage, unless the injury sustained be equivalent to fifty per centum on the agreed value in this policy; and the assured also agrees that the steamboat aforesaid is and shall be kept at all times during the continuance of this policy tight and sound, and her seams properly caulked, and sufficiently found in tackle and appurtenances thereto, and competently provided with master, officers, and crew, and in all other things and means necessary for the safe navigation thereof; and that whenever said boat shall be under headway, or be moored in the night time, she shall show one or more lights in a conspicuous place, so as to warn and give notice to approaching
331 boats and vessels, and be run and navigated upon the aforesaid privileged waters, as is usual by boats of her class in the usual prosecution of lawful business. And is also agreed, in case of injury or accident, the officers and crew shall not leave the boat until the decision of the assurers in case of abandonment shall be known.

It is also agreed that in all cases of loss or damage the assured shall furnish to the said company the proofs of the same within thirty days from the date thereof; and all claims under this policy shall be barred unless prosecuted within one year from the same date; and no loss shall be paid unless the assured shall give immediate notice, in case of accident or loss, to this company.

And it is also agreed that no assignment or transfer of this policy shall in any case relieve the insured, or property hereby insured, from any or all of the conditions herein expressed; and a violation or noncompliance with any of such conditions, either by the assignee or assignor, before or after the assignment, shall vitiate this policy. Also, in case the note or obligation given for the premium herefor be not paid at maturity, the full amount of premium shall be considered as then earned, and this policy shall thereupon become and remain void, while said note or obligation remains overdue and unpaid.

In all cases of return premium a deduction shall only be made on the whole months of unexpired time; and whenever this company shall pay any loss the assured agrees to assign over all his right to recover satisfaction therefor from any other person or persons, town or other corporation, or to prosecute therefor at the charge and for account of the company, if requested; and the said company shall be entitled to such proportion of said damages recovered as the amount insured by them bears to the valuation of said boat.

332 It is also agreed that, should the said boat or vessel change master, the assurers shall have the privilege of ending the risk, if they so elect, by returning a pro rata premium for the unexpired time.

Warranted by the assured from any charge, damage, or loss which may arise in consequence of engaging, or having been engaged, in illicit or prohibited trade at any time whatsoever.

In the adjustment of claims for partial loss or damage to hulls of steamboats insured by the Citzens' Insurance Company no deduction will be made on account of new work, for eighteen months from the

date of the boat's departure on its first trip. From the termination of said eighteen months until the expiration of the twelve succeeding months, a deduction of one-fifth, "new for old," will be made on account of new work; and subsequently—[i. e., after the expiration of thirty months,] a deduction of one-third "new for old" will be made in all adjustments of such claims for partial loss, with these exceptions: The actual repairs to the boat, rendered necessary by any accident insured against, will be paid when it amounts to or exceeds five per cent, on the agreed value in the policy.

No allowance to be made for wages or provisions paid or furnished to officers or crew while the boat is detained by any accident, or while undergoing repairs, except for the time they are actually employed for the safety of the boat and cargo, for which time they will be included in the general average account.

The cargo will be required to bear its proportion or share of the expenses incurred for the common benefit, including the expenses of raising and pumping out the boat, getting out the cargo, and taking the boat to the nearest place where the necessary repairs can be made,
333 making a general average of the whole, for which the boat will have to contribute only her share in proportion to her value; for which share the company will be liable without regard to her per centage.

In witness whereof the president and directors of the Citizens' Insurance Company have caused these presents to be sealed with their seal, signed by their president, and attested by their secretary, in the city of Pittsburgh, in the State of Pennsylvania, this twenty-fourth day of August, A. D. 1864.

SEAL OF CITIZENS' INSURANCE COMPANY.

W'M BAGALEY, *President.*

Attest: SAMUEL REA, *Secretary.*

W'm P. Herbert.

The deposition of William P. Herbert, on behalf of respondent, taken before Gilbert M. McMaster, esquire, a notary public in the city of Pittsburg, State of Pennsylvania, at said city, on the 11th day of May, A. D. 1868.

WILLIAM P. HERBERT deposeth and saith, in answer to interrogatories, as follows, viz:

I reside in Allegheny City. I am sec'y of the Western Insurance Company, of Pittsburgh, Penn. Am acquainted with Capt. Hiram K. Hazlett & Capt. W'm J. Kountz. Our office had an insurance on the steamboat Katie. Policy to am't of five thousand dollars, dated 24th day of August, 1864, for one year. Issued to W. J. Kountz, per ac., &c. Paper marked "B" is a correct copy of the original policy which was surrendered to us on the adjustment of the loss. She was reported to us as having been lost near Evansville, Indiana, Nov. 22nd, 1864. The loss was adjusted Feb'y 3d, 1865. We paid to Capt. W. J. Kountz,
334 cash, thirty-seven hundred and fifty dollars, and surrendered the premium note, five hundred dollars. We got his rec'pt for forty-two hundred and fifty dollars, in full of all claims under said policy. There seems to have been an allowance of seven hundred and fifty dollars, whether for the wreck or not I cannot say. My recollection is that it was for our interest in the wreck, and for any interest that we might have in the amount to be received from the owners of the steamer with which the Katie collided.

(Signed) W'M P. HERBERT.

Exhibit "B" accompanying deposition of W. P. Herbert.

"B."

No. 8510.] [Vessel.

Western Insurance Company of Pittsburgh.

Sum insured, $5,000.	On account of W. J. Kountz for ac.	Premium,	$500
Valuation, $20,000.	Loss, if any, payable to him.	Policy,	$
			500

This policy of insurance witnesseth that the Western Insurance Company, of Pittsburgh, by these presents do cause W'm J. Kountz, for ac., &c., to be insured in the sum not exceeding five thousand dollars on the steamboat "Katie," valued at $20,000, lost or not lost, at and from Pittsburgh, Pa., with privilege to navigate the Ohio River and its tributaries, as said streams are usually navigated by
335 boats of her class, whereof is at present master, or whoever else shall be master.

SEAL OF WESTERN INSURANCE CO., OF PITTSBUGH.

WAR CLAUSE.—WESTERN INSURANCE COMPANY.

Warranted free from all claims for loss or damage arising from riot or civil commotion, or from sequestration, seizure, capture, or detention, or the consequences of any other hostile act of the Government or people of any State of this Union, or any usurped power whatever.

Beginning the adventure upon the said steamboat at noon, on the twenty-fourth day of August, 1864, and to continue and endure until noon, on the twenty-fourth day of August, 1865.

And it shall be lawful for the said boat or vessel, during said time, to proceed and sail to, touch and stay at, any ports or places which may be convenient for the transaction of business, or if thereunto obliged, by stress of weather or other unavoidable accidents; also, at the usual landings for wood and refreshments, and for discharging freight and passengers, without prejudice to this insurance. And in case of any loss or misfortune resulting from any peril insured against, the party insured engages for himself or themselves, his or their factors, servants, or assigns, to sue, labor, travel for, and use all reasonable and proper means for the security, preservation, relief, and recovery of the property insured, or any part thereof; to the charges whereof the said company engages to contribute in proportion as the sum insured bears to the whole sum at risk, and the acts of the assured, or assurers, or of their joint or respective agents in preserving, securing, or saving the property insured, in case of danger or disaster, shall not be considered or held to be a waiver or acceptance of abandonment, the company having been paid the consideration for this insurance at the rate of ten per centum.

336 Touching the adventures and perils which the said insurace company is contented to bear, and take upon them under this policy, they are of rivers, fires, and all such losses and misfortunes which shall come to the hurt, detriment, or damage of the said steamboat Katie, according to the true intent and meaning of this policy.

And in case of loss, such loss to be paid in sixty days after proof of loss, proof of interest, and adjustment exhibited to the assurers; the amount of the premium, or the note given for the premiums if unpaid, and all sums due from the assured to the company, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the assurers; but no loss or average shall in any case be paid under five per cent. on the agreed value in this policy unless general.

And it is hereby agreed that this policy shall become void if any further insurance has been, or hereafter shall be, made on said steamboat, which, together with this insurance, shall exceed the sum of ten thousand dollars, or upon any assignment thereof, unless notice is given at the office of the company, and the same be approved and indorsed hereon by the secretary or other authorized officer of the company.

In all cases of return premium a deduction shall only be made on the whole months of unexpired time. And whenever this company shall pay any loss the assured agrees to assign over all his right to recover satisfaction therefor from any other person or persons, town, or other corporation, or to prosecute therefor at the charge and for account of the company if requested. And the said company shall be entitled to such proportion of said damages recovered as the amount insured
337 by them bears to the valuation of said boat.

It is also agreed that, should the said boat or vessel change master, the assurers shall have the privilege of ending the risk, if they so elect, by returning a pro rata premium for the unexpired time.

It is agreed that the assured shall not abandon, as for a total loss, on account of the said boat or vessel grounding, or being otherwise detained, or in consequence of any loss or damage, unless the injury sustained be equivalent to fifty per centum on the agreed value in this policy; and the assured also agree that the steamboat aforesaid is, and shall be, at all times, during the continuance of this policy, sound, staunch, and her seams sufficiently caulked and tight, and sufficiently found in tackle and appurtenances thereto, and competently provided with master, officers, and crew, and in all other things and means for the safety of said boat or vessel, and that when said boat or vessel is under headway, or moored, shall in the night-time show one or more lights in a conspicuous place as a warning to approaching vessels. And it is also agreed, in case of injury or accident, the officers and crew shall not all leave the boat or vessel until the decision of the assurers, in case of abandonment, shall be known.

And it is further agreed that, in all cases of loss or damage, the assured shall furnish to the said company the proofs of the same within thirty days from the date thereof; and all claims under this policy shall be barred, unless prosecuted within one year from the same date; and no loss shall be paid unless the assured shall give immediate notice, in case of accident or loss, to this company.

338 It is also agreed between the parties that this company shall not be liable for any loss or damage arising from, or occasioned by, the said boat being unduly laden during the continuance of this policy. Neither shall said company be liable for any loss or damage arising from, or occasioned by, the bursting of boilers, the collapsing of flues, or the derangement or the breaking of the engine or machinery, or any consequences resulting therefrom, unless the same be caused by unavoidable external violence.

Warranted by the assured free from any charge, damage, or loss which

may arise in consequence of engaging, or having been engaged, in illicit or prohibited trade at any time whatsoever.

In the adjustment of claims for partial loss or damage to hulls of steamboats insured by the Western Insurance Company, no deduction will be made on account of new work for eighteen months from the date of the boat's departure on its first trip. From the termination of said eighteen months until the expiration of the twelve succeeding months a deduction of one-fifth "new for old" will be made on account of new work; and subsequently, (i. e. after the expiration of thirty months,) a deduction of one-third "new for old" will be made in all adjustments of such claims for partial loss. With these exceptions, the actual repairs to the boat, rendered necessary by any accident insured against, will be paid when it amounts to, or exceeds, five per cent. on the agreed value in the policy.

No allowance will be made for wages or provisions paid or furnished to officers or crew while the boat is detained by any accident, or while undergoing repairs, except for the time they are actually employed
339 for the safety of the boat and cargo, for which time they will be included in the general average account.

The cargo will be required to bear its proportion or share of the expenses incurred for the common benefit, including the expense of raising and pumping out the boat, getting out cargo, and taking the boat to the nearest place where the necessary repairs can be made—making a general average of the whole, for which the boat will have to contribute only her share in proportion to her value, for which share the company will be liable, without regard to per centage.

In witness whereof the president and directors of the Western Insurance Company have caused these presents to be sealed with their seal, signed by their president, and attested by their secretary, in the city of Pittsburgh, this twenty-fourth day of August, A. D. 1864.

R. MILLER, JR., *President.*

Attest:

F. M. GORDON, *Secretary.*

[50 cents U. S. int. rev. stamp.]

I certify that this is a correct copy of the original policy on file in this office.

(Signed) W'M P. HERBERT,
Sec'y Western Insurance Co. of Pittsburgh.

PITTSBURGH, *May 11th*, 1868.

Christopher R. Rudd.

The deposition of Christopher R. Rudd, on behalf of the libellants, taken before Samuel K. Leavitt, esquire, a notary public in and for the county of Vanderburgh, State of Indiana, at the city of Evansville, in said last-mentioned county and State, on the 28th day of February, A. D. 1868.

C'RISTOPHER R. RUDD deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

Question 1. What is your name, age, occupation, and place of residence?

340 Answer. My name is Christopher R. Rudd; I am forty-nine years of age; my occupation is steamboat agent, and I reside in Evansville, Vanderburgh County, Indiana.

Question 2. Do you know the parties to this suit?

Answer. I know H. K. Hazlett, but am not acquainted with the other parties.

Question 3. Have you any knowledge of the value of steamboats? If yea, state how you acquired that knowledge?

Answer. I have; by being connected with them for many years as clerk, captain, owner, and agent.

Question 4. Have you any knowledge of a steamboat called "The Katie?" If yea, do you know by whom she was owned? If yea, please state; and, also, do you know what became of her? If you do know, please state.

Ans. I was acquainted with the steamboat Katie. She was built, I think, in 1864 for H. K. Hazlett and others. She was sunk near Diamond Island, in the Ohio River, in November of 1864.

Question 5. Do you know what was the value of "The Katie" before and at the time she was sunk? If yea, please state.

Answer. Such boats were rating at thirty-five to forty thousand dollars at that time. I think she could have been sold for thirty-eight thousand dollars at that time.

Cross-examined by counsel for the respondent, David D. Daughty:

Question 1. Do you know what was the cost of the steamboat Katie?

Answer. I do not know exactly. All I know about the cost is what Hazlett told me at the time he came here with her. I think it was in November, 1864. She was entirely new then. I understood him
341 to say the cost in the neighborhood of forty-five thousand (45,000) dollars.

Question 2. Do you know whether the engines and machinery on the boat were new or old?

Answer. My understanding at the time was that they were all new.

Question 3. Have you any personal knowledge as to whether they were new or old?

Answer. I have not further than that I looked at them, and that was my impression. They certainly had that appearance. They certainly could not have been used much, if any.

Question 4. How do you know that the Katie was sunk in 1864?

Answer. The passengers that left on her from my wharf-boat returned the same night, and stated that she had been sunk by striking the "Des Moines," or the Des Moines striking her. They stopped on the w'arf-boat that night, (many of them wet and cold,) and said they had lost much of their baggage. They returned during the after part of the night, and spent the balance of the night on the wharf-boat.

Question 5. Do you know the steamboat "Carrie?" If yea, what was she worth at the time the Katie was sunk?

(Question objected to by Morris S. Johnson, att'y for libellant, as irrelevant.)

Answer. I do know her. I would consider her worth at that time forty thousand (40,000) dollars.

(Answer objected to by Morris S. Johnson, attorney for libellant, as irrelevant.)

Question 6. Was or was not the "Carrie" built on the same model as the "Katie," and was she or not just such a boat?

(Question objected to by Morris S. Johnson, attorney for libel-
342 lant, as irrelevant.)

Answer. They were not of the same model, nor of the same tonnage, nor of the same number of boilers.

Question 7. Describe the "Katie," giving her dimensions, number of chimneys, number of boilers, size, diameter of cylinder, stroke, and the location of the engines and machinery.

Answer. I cannot give the dimensions of her hull exactly, length and beam. She was a stern-wheel steamboat, one chimney, two boilers, two engines. My impression is, fourteen or fourteen and a half inch cylinders in diameter; and my impression is, four or four and a half foot stroke, and the machinery all situated well to the stern of the boat.

Question 8. Were you acquainted with the value of boats built in that particular way? and if so, state your means of information.

Answer. There is no difference in the cost of boats built that way and the other, except in the cost of one chimney less. The situation of the engines and machinery on the steamboats Carrie and Katie was the same as on the other stern-wheel steamboats, except that the boilers were placed farther back. The boats were not built in that way to save expense in construction, but to give more room for freight and stock. The Government at that time were shipping a great deal of stock.

Question 9. How many steamboats do you know having been built on that plan?

Answer. None but the two I was acquainted with.

Question 10. Did you ever know about that time of any steamboat being sold that was built upon the plan of the Katie and Carrie?

Answer. The Katie was sunk, and the Carrie never changed hands that I know of. I also state, as I have stated before, that I
343 never knew but those two boats built in precisely that manner. I never knew a boat sold or to change hands built in exactly that way.

Reëxamination-in-chief by libellant:

Question 1. Do you about what was the tonnage of the Katie? If yea, please state.

Answer. From three hundred and fifty (350) to four hundred (400) tons.

Question 2. Do you know of any steamboats being sold at that time of like value, or about the same value as the Katie? If yea, state what boats, and the prices.

Answer. I know the Charmer was sold at this wharf of similar tonnage, but full cabin. She brought forty thousand (40,000) dollars.

(This answer is objected to by David D. Daughty, att'y for respondent.)

Question 3. Do you know what effect it would have upon the value of a steamboat, at that particular time, to place her machinery and boilers in the position they occupied on the steamer Katie? If yea, please state.

Answer. It would have the effect of increasing the value, carrying more freight upon less draught of water. It was an experiment that proved a success.

(This answer is objected to by David D. Daughty, attorney for respondent.)

(Signed) C. R. RUDD.

Edward D. Leezer.

The deposition of Edward D. Leezer, on behalf of the libellants, taken before Samuel K. Leavitt, esquire, a notary public in and for the county of Vanderburgh, State of Indiana, at the city of Evansville, in said last-mentioned county and State, on the 28th day of February, A. D. 1868.

344 EDWARD D. LEEZER deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

Question 1. What is name, age, occupation, and place of residence?

Answer. My name is Edward D. Leezer; twenty-five years old; my occupation is that of a wrecker, and at present I reside in Evansville, Indiana.

Question 2. Are you acquainted with the parties to this suit?

Answer. I am acquainted with Capt. Hazlett. He is the only one of the parties I am acquainted with.

Question 3. Did you ever see a steamboat called "The Katie?" If yea, state when and where, and what was her condition when you last saw her.

Answer. I have seen the steamboat "Katie" at Diamond Island, a little below the middle of the island, in the Ohio River. She was lying with her stern up stream, towards the Indiana shore, and her bow quartering towards Diamond Island. She was almost on her beam ends. There was a hole in her starboard quarter, afore the capstan. It was a large hole—from four to six feet on top. She was sunk—badly sunken. It was from the 17th to the 20th of December, 1864.

Question 4. Under what circumstances, and how did you come to see her at that time?

Answer. By being applied to to raise the boat, if possible, by Capt. McConnell, who was then, I think, captain of the boat. I went there with a bell-boat, to attempt the raising of the wreck. After getting there, there were circumstances, by the rising of the river rapidly, and, after that, by the ice, that we were prevented from raising the wreck. We did not get enough off the wreck to pay expenses.

Question 5. What was your business then?

345 Answer. I was employed on a wrecking-boat. I was a steamboatman, and part owner of the wrecking-boat.

Question 6. Are you acquainted with the value of steamboats? Do you know the value of the Katie at the time she was sunk?

Answer. Yes; I have a fair knowledge of their value. I know the value of "The Katie" when she was sunk, having been through her. She was worth from thirty to forty thousand dollars.

Question 7. What effect had the sinking of the Katie on her value?

Answer. It caused her to be a total loss.

Question 8. What effort did you make to raise the steamboat Katie?

Answer. All the effort in our power.

Cross-examined by David D. Daughty, attorney for the respondent:

Question 1. Did you ever see "The Katie" before she was sunk; and if so, how often?

Answer. I have seen her. I cannot tell how many times I have seen her passing. I was on board her once at this place and once when she landed by the side of my boat to put off some hands and freight. I think I was on board her on the last occasion; but am not certain.

Question 2. Was the Katie constructed in the usual manner of building steamboats? And *was* her engines, machinery, and boilers in the usual place?

Answer. Yes; in all except the placing of the boilers. Instead of being placed forward they were placed aft. Her machinery was no different, except in the placing of the boilers.

Question 3. Did you ever see any other steamboat having her boilers placed in the same manner as "The Katie?"

Answer. Yes, sir; I saw another. The steamer Carrie was similarly constructed. They had but one chimney.

346 Question 4. Have you any personal knowledge of the value of boats constructed in that manner?

Answer. I have, as well as any other. I know the value of those boats as well as any other. The difference is in less pipe, I suppose.

Question 5. Have you ever had any experience with boats constructed in that manner, with the boilers in the stern and with one chimney?

Answer. No, sir; No more than with the Katie. I have been on board the Carrie. They were both built on the same plan.

Question 6. Did you ever know the sale of a boat that was built on that plan?

Answer. No, sir.

Question 7. Do you know whether the engines and machinery of the Katie were new or old; if so, state?

Answer. By repute I knew her only as a new boat, coming out new, machinery and all. I knew nothing of the state of the machinery, except by hearsay.

Question 8. On what do you base your estimate of the value of the Katie?

Answer. By her general appearance, her working properties, and the capacity of the boat as a good freight boat.

Question 9. Do you personally know that the Katie was worth thirty or forty thousand dollars, or did you reach that conclusion from what you have heard others say?

Answer. I know it.

Question 10. Do you know what it would have cost to build such a boat at that time?

Answer. Not exactly. It would depend upon the circumstances under which it was built. In some places it would take longer and she could be built cheaper than at others.

Question 11. How long had the Katie been sunk when you first saw her?

Answer. I cannot definitely tell the time now. I cannot determine. A week, perhaps; and perhaps more.

Question 12. Describe the appearance of the hole in the Katie when you first saw her.

347 Answer. It was a hole in the shape of a V. It looked like it had been stove in by colliding with another steamboat. A steamboat's bow must have made it. The timbers looked as if they had been smashed in. Some of the ends of the planks looked shattered.

Question 13. When did you abandon the attempt to raise her?

Answer. Somewhere in April or May. We lay there during all that ice and high water, watching an opportunity.

Question 14. Was ever any machinery taken out of the wreck; and if so, by whom?

Answer. I have taken out a shaft and a pump or two. That is all I know about.

Question 15. What was done with what you took out

Answer. It is here, in the city, on the river bank. It is in the hands of Jacob Sinzick & Son, or was the last I knew anything about it. It did not pay one-tenth the cost of taking it out.

Question 17. State what you did and all you did in trying to save the wreck?

Answer. After we arrived there and found it impracticable to straighten her up and pump her out, we rigged up our barges to lift her and carry her into shore if possible. After taking hold, the river began rising so rapidly that we parted our chains and found it impossible to do anything. The ice came and disturbed us again. We made four efforts, I think.

Question 18. Did you at any time use a diving-bell?

Answer. No, sir.

Question 19. In your first effort to raise her, could you have raised her if the river had not been rising?

Answer. Yes, sir; I could have raised her if I could have straightened her up. I believe I could have raised her if the river had not risen so rapidly.

Question 20. Had the river been in a rising condition at any time during the two weeks previous to the time when you first went to raise her?

348 Answer. I cannot recollect.

Question 21. If you had commenced trying to raise the Katie ten days sooner would you have been interrupted by the river rising?

Answer. I cannot tell.

Reëxamined-in-chief by Morris S. Johnson, att'y for libellant:

Question 1. Would the manner in which the *the* boilers were placed in the steamer Katie, and the other differences which you have named in her construction *for* other boats, make any material difference in her cost?

Answer. No, sir; no material difference from other boats of her class & tonnage.

Question 2. Would the use of a diving-bell have aided you in your efforts to raise that wreck?

Answer. No, sir; I don't suppose it would.

(Signed) E. D. LEEZER.

Thomas R. Boluss.

The deposition of Thomas R. Boluss, on behalf of the libellants, taken before Samuel K. Leavitt, esquire, a notary public in and for the county of Vanderburgh, State of Indiana, at the city of Evansville, in said last-mentioned county and State, on the 29th day of February, A. D. 1868.

THOMAS R. BOLUSS deposeth and saith, in answer to *to* interrogatories, as follows, viz:

Question 1. State your name, age, occupation, and place of residence?

Answer. My name is Thomas R. Boluss; thirty-five years of age; by occupation the captain of a steamboat; and reside in Evansville, Indiana.

Question 2. Are you acquainted with the parties to this suit?

Answer. I know Captain Hazlett.

349 Question 3. Have you any knowledge of a steamboat *call* the "Katie," and do you know what became of her? if yea, please state.

Answer. I have. She was sunk about the middle of Diamond Island.

Question 4. Have you any knowledge of the value of steamboats; and if yea, how did you acquire that knowledge?

Answer. I have a knowledge of the value of steamboats. I have been employed in steamboating about eighteen years, as engineer, pilot, and captain. In that way I have become acquainted with the value of steamboats, and have had six boats in six or seven years.

Question 5. Do you know what was the value of the steamboat Katie at and before she was sunk? if yea, please state.

Answer. I had a steamboat myself about the same time. I believe I do know the value. She was worth between twenty-five and thirty thousand dollars. She could have been sold for that, I think.

Question 6. How did the steamboat Katie differ in her construction from other boats?

Answer. Well, her boiler was close to her engines to give her more room.

Question 7. What was her length and tonnage?

Answer. In the neighborhood of one hundred and fifty feet long, and would carry about three hundred tons, I should think.

Question 8. Was she new or old?

Answer. She was a new boat. My understanding was the machinery was new, from the owners of the boat. The machinery looked new any way.

Question 9. Do you remember at what time she was sunk?

Answer. I do not, exactly. It was in the winter of 1863 or the spring of 1864. It was in the winter sometime.

(Signed) THOMAS R. BOLUSS.

350 *Henry T. Dexter.*

The deposition of Henry T. Dexter, on behalf of the libellants, taken before Samuel K. Leavitt, esquire, a notary public in and for the county of Vanderburgh, State of Indiana, at the city of Evansville, at said last-mentioned county and State, on the 2nd day of March, A. D. 1868.

HENRY T. DEXTER deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

Question 1. State your name, age, occupation, and place of residence.

Answer. My name is Henry T. Dexter; aged forty-nine years; by occupation a steamboatman; and reside in Evansville, Indiana.

Question 2. How long have you been in the steamboat business, and in what capacity?

Answer. Over thirty years; and in every capacity on a steamboat except engineer, I believe. I have owned steamboats for the last twelve or fifteen years.

Question 3. Have you ever known anything of a steamboat called the "Katie?" If so, please state what you know about her, and what became of her, if you know.

Answer. I knew the steamboat called the "Katie." I know she was running from here to the Cumberland River, and was sunk at Diamond Island, in the Ohio River. I do not remember at what time exactly.

Question 4. State, if you know, what kind of a boat the Katie was for business.

Answer. She was a low-water boat. I considered her one of the best boats on the western waters for making money, because she had capacity for carrying large freight on low water. Another reason was, she used to make regular trips, when I know the water was low in the Cumberland River.

Question 5. Are you acquainted with the value of steamboats,
351 and have you been acquainted with their value for the last six years?

Answer. I am and have been acquainted with their value during that time.

Question 6. Do you know the value of the "Katie" at and before the time she was sunk? If so, please state.

Answer. I think I did know her value at the time she was sunk and before. At the time she was sunk I should consider her a cheap boat at forty thousand dollars. She was worth that amount at that time, in my opinion.

Cross-examined by David D. Daughty, attorney for respondent:

Question 1. Was there anything peculiar in the construction of the "Katie" differing from other steamboats; and, if so, how?

Answer. Yes, sir, there was. Her machinery and boilers were all aft, which gave her room for handling freight quicker and cheaper than any other boat.

Question 2. Was not this manner of constructing boats an experiment?

Answer. The "Carrie" was the first one of the kind, I think. I consider it a very successful experiment.

Question 3. Were the boats constructed in this way, as to strength and durability, of equal value with boats constructed in the usual manner?

Answer. They could be built as strong as in any other manner. I should not think there was any difference.

Question 4. Could the Katie carry more freight with less water on account of the peculiar construction you have spoken of than other boats?

(Question objected to by attorney for libellants.)

Answer. I think she could.

Question 5. State why you think so.

352 Answer. Her machinery being all in one end, it took more freight to turn her; her boilers being aft, she had all that room for stock or other freight.

Question 6. If two boats are built of the same dimensions, and in every respect the same with the exception that the machinery of one is placed as was the machinery of the Katie, and the machinery of the other in the usual manner, would one of such boats carry more freight with less water than the other?

Answer. I think one would carry just as much as the other. The only difference I see is in having the capacity of handling freight quicker and cheaper. A boat built on the usual plan is lighter without any freight.

Question 7. You stated that the experiment was a success. Please state if you know that the Katie, as a boat, was a success.

Answer. I consider her such, or I should not have stated it.

Question 8. Did you ever examine her?

Answer. Not particularly.

Question 9. How long did she run while you knew her?

Answer. I could not state how long she run. I know she had not run long when she was sunk. I cannot recollect from memory. I know she made several trips. She might have been here one month or several months. I know she was in the Cumberland trade. I cannot recollect so long back. I was running my own boat, and had no interest in her.

Question 10. If you were pecuniarily interested in an estimate of the value of any steamboat which you had only casually seen for two or three months, could you positively fix a sum anywhere near her true value without first making a personal examination of the boat?

Answer. I think I could. I bought the "Superior," and never was aboard of her till after I bought her.

353 Question 11. Did you know anything more about the "Superior" at the time you bought her than you did about the "Katie?"

(Question objected to by libellant's attorney.)

Answer. Well, I think I did a little more. I knew the size of her machinery.

Question 12. If you had wished to purchase the Katie, would you have done so without making or having made a personal examination of her?

(Question objected to by the attorney for libellants.)

Answer. I would have bought her without examination, unless she had been handy. The reason why I bought the Superior in that way was because she was in the Government service, and I could not see her. I would have bought her from her reputation.

Question 13. Is your estimate of her value based upon her general reputation?

Answer. It is not.

Question 14. If you would have bought her from her reputation, and if you had only occasionally seen her during a few months, and if you never made a personal examination of her, upon what, then, was your estimate of her value based?

Answer. Upon knowing that she was nearly a new boat and her capacities for making money.

Question 15. How did you know she was nearly a new boat?

Answer. I knew she had not been built long, but how long I could not tell. We always consider a boat not a year old nearly new. I knew she had not run long. I recollect seeing her when she came here new, and went on board her. I can tell a new boat by her appearance, by her decks, &c. I knew it when I went on board of her.

354 Question 16. Could you tell by going on board the "Katie" that the timbers of her hull or that her engines and machinery were new?

Answer. I did not see her timbers, but could have told if I had examined her. I know positively that she was a new boat when she came here. I could have told whether her machinery was new if I had examined it.

Question 17. Did you ever own, or have charge of, or have anything personally to do with, a boat constructed as the Katie and the steamboat Carrie were?

Answer. I have not.

Question 18. Did you ever know of a boat of that kind being sold?

Answer. No, sir.

Question 19. How many boats of that kind have you ever known of?

Answer. Only two, I believe. They were the Carrie and the Katie.

Question 20. Are there any boats of that kind now running, to your knowledge; and if so, give their names?

Answer. I don't know positively. I think the Carrie is running yet, but am not positive.

Question 21. When were these two boats built?

Answer. I don't know what year.

Question 22. Have you ever known of any boats being built in that manner since the year 1864?

Answer. I don't know of any being built since the Katie. I could not tell in what year she was built.

Question 23. If the experiment of the peculiar construction of the Katie and Carrie that you have spoken of was a success, why have no more boats ever been constructed in that manner?

Answer. I should answer the question in this way. I consider the Quickstep a complete success, but no other boat has been built
355 like her. I consider the Katie a success. There may have been a difference of opinion.

Question 24. When was the Quickstep built?

Answer. About fourteen months ago.

Question 25. Did you see the Katie after she was sunk?

Answer. Yes, sir.

Question 26. How soon after she was sunk did you first see her, and how often did you see her?

Answer. I don't recollect how soon. I saw the wreck there, and she is there now, all covered up with sand. I saw her, at least calculation, a hundred times.

Question 27. State what was her condition when you first saw her after she was sunk.

Answer. I considered her a perfect wreck.

Question 28. Do you know whether anything was ever saved from her?

Answer. No, sir; I do not.

Question 29. Did you ever stop at the wreck to make any examination?

Answer. No, sir. I stopped to take a passenger off a bell-boat working at her last fall. The river was rising, & they could not work at her, I understood. I think it must have been in July, 1867.

Question 30. Do you know who had charge of the bell-boat that was working there?

Answer. I do not.

Question 31. Is the bell boat you have mentioned the only bell-boat or wrecking-boat you ever saw at work there?

Answer. Yes, sir.

(This question and answer objected to by attorney for libellants.)

Question 32. Were you running a steamboat up and down the river past the wreck in the winter of 1864, 1865, and in the following spring?

Answer. I have been running steamboats for the last ten years
356 from here down, and usually made two trips a week. I was a part of the time in the Memphis trade during the war, but have most of the time been in the packet trade.

(Signed) HENRY T. DEXTER.

Francis M. Humphrey.

The deposition of Francis M. Humphrey, on behalf of the libellants, taken before Samuel K. Leavitt, esquire, a notary public in and for the county of Vanderburgh, State of Indiana, at the city of Evansville, in said last-mentioned county and State, on the 3rd day of March, A. D. 1868.

FRANCIS M. HUMPHREY deposeth and saith, in answer to interrogatories and cross-interrogatories, as follows, viz:

Question 1. State your name, age, place of residence, and occupation.

Answer. My name is Francis Marion Humphrey; aged forty-three years; reside in Vanderburgh County, Indiana; and by occupation a wharf-boat proprietor and forwarding and commission merchant.

Question 2. Have you ever been engaged in steamboating; and if so, in what capacity?

Answer. I was captain of a steamboat three years or seasons.

Question 3. Are you acquainted with the value of steamboats?

Answer. I think I know something about the value of steamboats.

Question 4. Do you know anything of a steamboat called the "Katie;" if so, when did you know her, and what became of her?

Answer. I did know a steamboat called the "Katie," but do not remember in what year. I heard she was sunk near Diamond Island, and afterwards saw her machinery here.

Question 5. Do you know the value of the steamboat Katie at and before the time she was sunk? If so, please state.

Answer. I think I do. She was worth from thirty-five to forty
357 thousand dollars, I think, and would have sold for that much money.

Cross-examined by David D. Daughty, attorney for respondent:

Question 1. Was there anything peculiar in the construction of the Katie, differing from other boats? If so, state what it was.

Answer. There was. Her machinery and boilers were all on her stern, and she had but one chimney. I mean that her machinery and boilers were further aft than is customary.

Question 2. Was not that manner of constructing boats an experiment?

Answer. I guess it was, but do not know. She was the second one I ever saw of that kind.

Question 3. How many boats of that kind have you ever known, and what are their names?

Answer. I don't remember but two; the Carrie and Katie.

Question 4. How often did you ever see the Katie?

Answer. I don't remember. I think she was here some two or three months, running from here to Nashville, and if so, must have been here about every week. I presume I saw her every time.

Question 5. Upon what do you base your estimate of her value?

Answer. Upon her size, and the way other steamboats were selling at that time, and her capacity.

Question 6. Describe the Katie, giving her dimensions, number of boilers, diameter of cylinder, stroke, and tonnage.

Answer. I think the Katie was about one hundred and fifty feet long; I don't know how wide she was; she had one boiler—I don't know the size; she had two engines—I don't know their size, nor her stroke; I think she would carry three hundred and fifty tons—perhaps four hundred.

358 Question 7. What was the size of her cabin; what kind of a cabin had she, and how was it finished?

Answer. I don't know the length of her cabin; it was not a full cabin—not the full length of the boat. She had a short cabin, and I think it was finished in plain style. I don't know how it was furnished.

Question 8. When you saw her, and at the time where she was sunk, was she new or old?

Answer. I think she was three or four months old when she was sunk.

Question 9. Were her timbers and machinery new or old?

Answer. I don't know. I said before she was only three or four months old, I think; that was her hull, but I don't know whether her machinery was new or old. Her hull was new; I think the boiler was new.

Question 10. Did you ever make a personal examination of her?

Answer. I was aboard the boat, and looked at her when she first landed here.

Question 11. Could you tell, by going on board of her, that the timbers of her hull were new?

Answer. I don't know any other way a man could tell. All that I saw was new.

Question 12. Did you go in her hold?

Answer. I don't think I did; I don't remember.

Question 13. Could you tell without going in her hold that her hull was all new?

Answer. No; I could not tell that all her timbers were new without going down & examining her.

Question 14. What would it have cost in the summer and fall of 1864 to build a boat like the Katie?

(Question objected to by attorney for libellants.)

Answer. I don't know.

359 Question 15. What would her hull have cost, if built new?

(Question objected to by attorney for libellants.)

Answer. I don't know.

Question 16. What would her engines and machinery have cost, if bought new?

(Question objected to by attorney for libellants.)

Answer. I don't know.

Question 17. What was it worth, and what would it have cost to do the painting that was done on the Katie?

(Question objected to by attorney for libellants.)

Answer. I don't know.

Question 18. What was her cabin worth, and what would such a cabin have cost?

(Question objected to by attorney for libellants.)

Answer. I don't know.

Question 19. What was the blacksmith' worth, and what would it have cost?

(Question objected to by attorney for libellants.)

Answer. I don't know.

Question 20. What was her bedding, cabin, and state-room furniture worth, and what would such furniture have cost?

(Question objected to by attorney for libellants.)

Answer. I don't know.

Question 21. What were her queensware, rope, and rigging worth, and what would they have cost?

(Question objected to by attorney for libellants.)

Answer. I don't know.

Question 22. What were her stoves and tin-iron worth, and
360 what would they have cost?

(Question objected to by by attorney for libellants.)

Answer. I don't know what they would have cost.

Question 23. What were her blocks worth, & what would they have cost?

(Question objected to by attorney for libellants.)

Answer. I don't know.

Question 24. What were her life-boat and yawl worth, and what would they have cost?

(Question objected to by attorney for libellants.)

Answer. I don't know.

Question 25. Was there any difference in the value of steamboats and steamboat material from the year 1862 to the year 1866? and if so, state the difference in value, each time the value increased or decreased during that period.

(Question objected to by attorney for libellants.)

Answer. So far as material was concerned I don't know anything about it. I think there was a gradual increase in steamboat stock from 1862 to 1866; my impression is that the advance was a very heavy one from 1862 to 1866, if my memory serves me right.

Question 27. State, as near as you can remember, how much was the increase in the value of steamboats up to the year 1866, from the year 1861, and was that increase gradual or otherwise; if so, state.

Answer. As near as I can recollect, steamboats were worth three times as much in 1866 as they were in 1861. I think there was a big jump in the increase from 1861 to 1862, and after that the increase was gradual.

361 Question 28. What would have been the value of just such a boat as the Katie in the year 1866?

(Question objected to by attorney for libellants.)

Answer. I think she would have sold for twenty-five thousand dollars in 1866.

Question 29. What would have been the value of a boat just like the Katie in the year 1862?

(Question objected to by attorney for libellants.)

Answer. I don't know.

Question 30. What was your business in the year 1862?

Answer. Forwarding and commission merchant.

Question 31. What would have been the value of a boat just like the Katie, in the year 1863?

(Question objected to by attorney for libellants.)

Answer. I think a boat like the Katie would have sold in the year 1863, for from thirty to forty thousand dollars.

Question 32. Why can you not give the value of such a boat in the year 1862?

(Question objected to by attorney for libellants.)

Answer. Because I do not remember whether the advance was in 1862 or in 1863. I have nothing to fix the advance by.

Question 33. When did you know the Katie, and when was she sunk?

Answer. I don't remember the year.

Question 34. Have you ever had any experience with boats constructed in the manner as was the Katie and Carrie?

Answer. No.

Question 35. Did you ever know of a boat of that kind being sold?

Answer. No.

362 Question 36. Where and when did you see the machinery that was taken from the wreck of the Katie?

(Question objected to by attorney for libellants.)

Answer. I saw it here, I think, in the fall of 1865.

Question 37. How much of her machinery did you see? and state, if you know, who took it from the wreck, and who brought it here.

Answer. I don't know what amount of machinery was brought here. I know there was a large amount of machinery on a flat-boat, but don't know who took it off, or who brought it here.

Question 38. Do you know its value; if so, state, and what was done with it.

(Question objected to by attorney for libellants.)

Answer. I don't know its value, nor what was done with it.

Question 39. Do you know if the cabin furniture was saved from the wreck of the Katie? State everything you know of having been taken from the wreck.

(Question objected to by attorney for libellants.)

Answer. I don't remember whether anything was saved or not.

Reëxamined by attorney for libellants:

Question 1. What effect did the manner of constructing the Katie, as referred to in your answer to respondent's first interrogatory, have as to her capacity for carrying freight?

(Question objected to respondent's attorney.)

Answer. By the machinery and boilers being aft it gave her much more room than boats ordinarily have on deck, for storing.

Question 2. Had not steamboat stocks begun to depreciate in value in the year 1866?

Answer. I think they had.

(Signed) F. M. HUMPHREY.

363 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I Benjamin F. Hickman, clerk of the district court of the United States in and for the eastern district of Missouri, do hereby certify the writings hereto annexed to be a true copy of the original record and proceedings and of the evidence read upon the hearing, and taken in case No. 1108, A. D. 1865, of Hiram K. Hazlett & Adam Weaver, libellants, against Peter Conrad, respondent, as fully as the same remain on file and of record in said case, in my office.

In witness whereof I hereunto subscribe my name, and affix the seal of said court, at office in the city of St. Louis, in said district, this fifth day of April, in the year of our Lord eighteen hundred and sixty-nine.

[SEAL.] BEN. F. HICKMAN,
Clerk of said Court.

And afterwards, to wit, at a regular stated term of the circuit court of the United States in and for districts of Missouri, begun and holden at the city of St. Louis, in said districts, on the fifth day of April, 1869, the following proceedings were had in said cause, on Tuesday, the 18th day of May, 1869, to wit:

Appeal from dist. court east. dist. Mo.

HIRAM K. HAZLETT ET AL., LIBELLANTS & appellees,
ag'st
PETER CONRAD, RESPONDENT & APPELLANT.

Order of continuance.

364 This day come the parties, by attorneys, and by consent, it is ordered that this case be now continued until the next term of this court.

And afterwards, to wit, at a regular stated term of the circuit court of the United States in and for districts of Missouri, begun and holden at the city of St. Louis, in said district, on the fourth day of October, 1869, the following further proceedings were had in said cause, on Monday, the tenth day of January, 1870, to wit:

Appeal from U. S. district court for the eastern dist. of Missouri.

HIRAM K. HAZLETT ET AL., LIBELLANTS & appellees,
ag'st
PETER CONRAD, RESPONDENT & APPELLANT.

Order of continuance.

It is ordered that this case be now continued until the next term of this court, in accordance with an agreement signed by the attorneys for the parties, and this day filed herein.

And said agreement, filed on said tenth day of January, 1870, is as follows, to wit:

In the United States circuit court for the districts of Missouri.

HIRAM K. HAZLETT ET AL., LIBELLANTS,
vs.
PETER CONRAD, RESPONDENT.

Agreement for continuance.

We hereby agree that this case shall be continued over to, and be tried at, the April term, 1870, of said circuit court, to be then tried by both judges, if they attend or hold court. If they are not all here, then the case is to be tried by the proper judge at said term; this agreement is to be filed in the case.

JNO. H. RANKIN,
For Respondent.
SHARP & BROADHEAD,
For Libellants.

365 And afterwards, to wit, at a regular stated term of the circuit court of the United States in and for districts of Missouri, begun and holden at the city of St. Louis, in said districts, on the fourth day

of April, 1870, the following further proceedings were had in said cause, on Tuesday, the twelfth day of April, 1870, to wit:

Appeal from district court of United States for the east. district of Missouri.

HIRAM K. HAZLETT ET AL., LIBELLANTS & appellees,
ag'st
PETER CONRAD, RESPONDENT.

Cause heard and submitted.

This day come the parties, by attorneys, and this cause having been brought on for hearing, and the same having been this day fully heard, argued, and submitted to the court for a decree upon the record and proceedings in the district court of the United States for the eastern district of Missouri, and upon the cause as made out and presented to this court, and the court not being fully advised of and concerning the premises, said cause is by the court this day taken under advisement.

MEMORANDUM.—His honor, Judge Treat, did not sit or take part in the proceedings in said cause.

And afterwards, to wit, at said last-mentioned regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said cause, on Tuesday, the 19th day of April, 1870, to wit:

Appeal from U. S. district court for the eastern district of Missouri.

HIRAM K. HAZLETT ET AL., LIBELLANTS & appellees,
ag'st
PETER CONRAD, RESPONDENT.

Judgment and decree.

This day come the parties, by their respective advocates, and this cause having been brought on for hearing at a former day of the present term of this court, and the same having been fully heard,
366 argued, and submitted to the court for a decree upon the record and proceedings in the district court of the United States in and for the eastern district of Missouri, and upon the case as made out and presented to this court, the court, after examination of said record and proceedings, and being fully advised in the premises, doth now finally order, adjudge, and decree that the judgment and decree as rendered in this cause by said district court be, and the same is now hereby, affirmed; and that the said libellants and appellees, Hiram K. Hazlett and Adam Weaver, recover against Peter Conrad, the respondent and appellant herein, and against John Festor and Jacob Conrad, sureties on the bond of appeal filed herein, the sum of ten thousand and thirty-six dollars and fifty cents, ($10,036 50,) the amount of the damages adjudged by said district court to have been sustained by said libellants and appellees by reason of the collision in their libel set forth, with interest on said amount from the seventh day of January, A. D. 1869,

and also one-half of the costs of this cause in the said district court, as ordered by the decree of said district court; and also the costs of appeal to this court.

And it is further ordered that in case of default or contumacy in the payment of said sum, with interest and costs as aforesaid, by said respondent and sureties, within ten days from this date, execution be issued therefor against said respondent and sureties.

MEMORANDUM.—His honor, Judge Treat, did not sit or take part in the disposition of this case.

And afterwards, to wit, at said last-mentioned regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said cause, on Tuesday, the 26th day of April, 1870, to wit:

367 Appeal from U. S. district court from the eastern district of Missouri.

HIRAM K. HAZLETT ET AL., LIBELLANTS & appellees,
ag'st
PETER CONRAD, RESPONDENT & APPELLANT.

Petition for appeal to Supreme Court presented.

This day comes the respondent and appellant in this cause, by his advocate, and presents to the court his petition for the appeal of this cause from this court to the Supreme Court of the United States.

Appeal granted.

And the court, having examined said petition, and being advised of and concerning the same, now orders that said appeal be granted, and that the record and proceedings in said cause be certified and transmitted to said Supreme Court.

Bond of appeal presented and approved.

And said respondent and appellant, by his said advocate, also presents to the court his bond of appeal in said cause, executed by the said Peter Conrad, as principal, and John Festor, Jacob Conrad, and Marcus A. Wolff as sureties; which bond is approved and ordered to be filed of record in said cause.

MEMORANDUM.—His honor, Judge Treat, did not sit or take part in the proceedings in said cause.

And said petition for appeal is as follows, to wit:

Petition for appeal.

In the United States circuit court for the districts of Missouri.

HIRAM K. HAZLETT & ADAM WEAVER, libellants,
vs.
PETER CONRAD, RESPONDENT & APPELLANT.

To the honorable the Supreme Court of the United States:

The appeal of said Peter Conrad respectfully represents: That, on the ninth day of September, 1865, the parties above named filed their libel in the district court of the United States for the eastern district of Missouri, against the appellant, for the recovery of damages alleged
368 to have been sustained by the libellants to the steamboat "Katie" by collision with the steamer "Des Moines," on the Ohio River, on the 22nd day of November, 1864; that said libel averred that the libellants were the owners of said "Katie," and that the collision was caused by the negligence of those having charge of the "Des Moines," all of which were denied by the appellant in his answer thereto.

That such proceedings were had in said case that, on the seventh day of January, 1869, a final decree was made by said district court, wherein it was in substance adjudged that said collision was caused by the fault of those navigating both the said "Katie" and "Des Moines," and that the damages caused thereby should be equally divided between the libellants and respondent; and that the libellants recover against the respondent the sum of ten thousand and thirty-six $\frac{50}{100}$ dollars, with costs.

That thereafter your petitioner appealed therefrom to the circuit court of the United States for the districts of Missouri, whereby the said cause was removed to, and in due time it was tried by, said circuit court, and such proceedings were had therein that, on the ninteenth day of April, 1870, the said circuit court made a final decree in said cause whereby it was decreed that the said decree of said district court be in all things affirmed, with costs; and final judgment and decree was thereupon entered against your petitioner, & the stipulators upon the appeal bond, filed by your petitioner upon his appeal to said circuit court, for the sum of ten thousand & thirty-six $\frac{50}{100}$, with interest thereon at six per cent. per annum from the seventh day of January, 1869; and that the said appellees have execution therefor; which
369 said decree of the said circuit court, as appellant is advised, is erroneous and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, the libel, answer, pleadings, depositions, evidence, and all proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel with costs, on such other decree as to the said Supreme Court shall seem just.

PETER CONRAD, *Appellant.*

JOHN H. RANKIN,
Proctor for Appellant.

UNITED STATES OF AMERICA,
Districts of Missouri:

Peter Conrad, the appellant, makes oath & says that he believes the foregoing petition to be true.

PETER CONRAD.

Subscribed and sworn to before me.

interest on said

And said bond of appeal is as follows, to wit:

Bond of appeal.

UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In the circuit court of the United States for the districts of Missouri.

370 IN CASE NO. OF HIRAM K. HAZLETT & Adam Weaver, libellants, *against* PETER CONRAD, RESPONDENT & APPELLANT.

Know all men by these presents that we, Peter Conrad, as principal, and John Festor, Jacob Conrad, & Marcus A. Wolff, as sureties, all of the city of St. Louis, State of Missouri, are held and firmly bound unto the above-named Hiram K. Hazlett & Adam Weaver, in the sum of fifteen thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors, & administrators, firmly, jointly & severally, by these presents, sealed with our seals and dated this twenty-six day of April, 1870.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit against the said appellant, Peter Conrad, and sureties on his appeal bond, &c., on the nineteenth day of April, 1870, for the sum of ten thousand & thirty-six $\frac{50}{100}$ dollars, $10,036 50, with interest thereon from 7th day of January, 1869, by the circuit court of the United States for the districts of Missouri:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his said appeal to effect, and answer and pay all damages and costs that may be adjudged against him on said appeal if he should fail in said appeal, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

371 In witness whereof we have hereunto severally subscribed our names and affixed our seals at the city of St. Louis, in said district, the day & year aforesaid.

PETER CONRAD. [SEAL.]
JNO. FESTOR. [SEAL.]
JACOB CONRAD. [SEAL.]
MARCUS A. WOLFF. [SEAL.]

Signed, sealed, and acknowledged by said Peter Conrad, John Foster, Jacob Conrad, , the parties to the foregoing bond, before me, at office in the city of St. Louis, in said district, this twenty-sixth day of April, 1870.

372 UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Benjamin F. Hickman, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writing hereto annexed to be a transcript of the record and proceedings in

To the honorable the Supreme Court of the United States:

The appeal of said Peter Conrad respectfully represents: That, on the ninth day of September, 1865, the parties above named filed their libel in the district court of the United States for the eastern district of Missouri, against the appellant, for the recovery of damages alleged
368 to have been sustained by the libellants to the steamboat "Katie" by collision with the steamer "Des Moines," on the Ohio River, on the 22nd day of November, 1864; that said libel averred that the libellants were the owners of said "Katie," and that the collision was caused by the negligence of those having charge of the "Des Moines," all of which were denied by the appellant in his answer thereto.

That such proceedings were had in said case that, on the seventh day of January, 1869, a final decree was made by said district court, wherein it was in substance adjudged that said collision was caused by the fault of those navigating both the said "Katie" and "Des Moines," and that the damages caused thereby should be equally divided between the libellants and respondent; and that the libellants recover against the respondent the sum of ten thousand and thirty-six $\frac{50}{100}$ dollars, with costs.

That thereafter your petitioner appealed therefrom to the circuit court of the United States for the districts of Missouri, whereby the said cause was removed to, and in due time it was tried by, said circuit court, and such proceedings were had therein that, on the ninteenth day of April, 1870, the said circuit court made a final decree in said cause whereby it was decreed that the said decree of said district court be in all things affirmed, with costs; and final judgment and decree was thereupon entered against your petitioner, & the stipulators upon the appeal bond, filed by your petitioner upon his appeal to said circuit court, for the sum of ten thousand & thirty-six $\frac{50}{100}$, with interest thereon at six per cent. per annum from the seventh day of January,
1869; and that the said appellees have execution therefor; which
369 said decree of the said circuit court, as appellant is advised, is erroneous and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, the libel, answer, pleadings, depositions, evidence, and all proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel with costs, on such other decree as to the said Supreme Court shall seem just.

PETER CONRAD, *Appellant.*

JOHN H. RANKIN,
Proctor for Appellant.

UNITED STATES OF AMERICA,
Districts of Missouri:

Peter Conrad, the appellant, makes oath & says that he believes the foregoing petition to be true.

PETER CONRAD.

Subscribed and sworn to before me.

And said bond of appeal is as follows, to wit:

Bond of appeal.

UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In the circuit court of the United States for the districts of Missouri.

370 IN CASE NO. OF HIRAM K. HAZLETT & Adam Weaver, libellants,
against
PETER CONRAD, RESPONDENT & APPELLANT.

Know all men by these presents that we, Peter Conrad, as principal, and John Festor, Jacob Conrad, & Marcus A. Wolff, as sureties, all of the city of St. Louis, State of Missouri, are held and firmly bound unto the above-named Hiram K. Hazlett & Adam Weaver, in the sum of fifteen thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors, & administrators, firmly, jointly & severally, by these presents, sealed with our seals and dated this twenty-six day of April, 1870.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit against the said appellant, Peter Conrad, and sureties on his appeal bond, &c., on the nineteenth day of April, 1870, for the sum of ten thousand & thirty-six $\frac{50}{100}$ dollars, $10,036 50, with interest thereon from 7th day of January, 1869, by the circuit court of the United States for the districts of Missouri:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his said appeal to effect, and answer and pay all damages and costs that may be adjudged against him on said appeal if he should fail in said appeal, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

371 In witness whereof we have hereunto severally subscribed our names and affixed our seals at the city of St. Louis, in said district, the day & year aforesaid.

PETER CONRAD. [SEAL.]
JNO. FESTOR. [SEAL.]
JACOB CONRAD. [SEAL.]
MARCUS A. WOLFF. [SEAL.]

Signed, sealed, and acknowledged by said Peter Conrad, John Foster, Jacob Conrad, , the parties to the foregoing bond, before me, at office in the city of St. Louis, in said district, this twenty-sixth day of April, 1870.

372 UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Benjamin F. Hickman, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writing hereto annexed to be a transcript of the record and proceedings in

case of Hiram K. Hazlett and Adam Weaver, libellants & appellees, against Peter Conrad, respondent & appellant, as fully as the same remain on file and of record in said case, in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said districts, this fifteenth day of November, in the year of our Lord eighteen hundred and seventy.

[SEAL.] BEN. F. HICKMAN,
Clerk of said Court.

(Indorsed:) No. ——. United States circuit court, districts of Missouri. Hiram K. Hazlett and Adam Weaver, libellants & appellees, against Peter Conrad, respondent and appellant. Duly certified transcript of the record and proceedings in the above-entitled cause.

(Indorsement on cover:) No. 307. Peter Conrad, appellant, vs. Hiram K. Hazlett and Adam Weaver. Missouri C. C. U. S. Filed 23 November, 1870.

Supreme Court of the United States.

DECEMBER TERM, 1871.

PETER CONRAD, Appellant,
vs.
HIRAM K. HASLETT *et al.*, Appellees. } No. 108.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI. IN ADMIRALTY.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from the decree of the circuit court of the United States for the district of Missouri, when sitting as a court of admiralty, in a case of collision between two steamboats on the Ohio river—the "Katie" and the "Des Moines."

The case originated in the district court of the United States for the eastern district of Missouri. In that court Haslett & Weaver, the present appellees, as the owners of the steamboat "Katie," filed their libel against Conrad, the present appellant, as the sole owner and captain of the steamboat "Des Moines."

The libel gives the appellees' version of the cause of the collision. It charges, in substance, that on the night of the 22d of November, 1864, the steamboat Katie, a loaded vessel, while *descending* the Ohio river, near Diamond Island, was run into and totally lost and destroyed by the steamboat

Des Moines, while *ascending* the river at that point; that the collision (omitting particulars) was *caused by a sudden change of course by the Des Moines from the Indiana towards the Kentucky shore, in the direction of the Katie, &c.;* "that the said collision and damage were caused by no negligence or want of care or skill on the part of the Katie or those having charge of her, but *solely by the carelessness, negligence, and want of skill of those having charge of the steamer Des Moines;*" and alleges that the damage sustained amounted to $40,000. This libel was sworn to by H. K. Haslett, one of the owners, necessarily "upon information and belief," although it is not so stated, because he was not present at the time of the collision. The Katie, at the time, was commanded by Captain Alex. J. McConnell. (Printed Record, p. 3.)

The answer to the libel was filed and sworn to by the appellant, Peter Conrad, who was both captain and owner of the Des Moines at the time of the collision, and who therefore spoke from positive knowledge of the facts of the collision. The answer gives the appellant's version of the facts of the case as follows:

"Sixth. Respondent states that about nine o'clock on the night of the 22d of November, 1864, the steamer Des Moines, laden with United States troops, was *ascending* the Ohio river, running up *near* the Indiana side of the river, and in her proper place as an ascending vessel, when, a short distance *below the head* of "Diamond Island," her pilot on watch saw something in the river, *about one-half mile distant*, which he supposed was a steamboat coming down the Indiana side of the river, and about one hundred or one hundred and twenty-five yards from that shore. *No signal lights could be seen thereon.* The pilot on the Des Moines at once blew his whistle twice, thereby indicating that the Des Moines would pass up along the Indiana shore; but he received no answer thereto, when he immediately *stopped his engines* and *ran very slowly.* While the headway of the vessel Des Moines was running (and before it ran) out, the said pilot and officers of the Des Moines (several of whom were on watch) discovered that the vessel in sight was a steamer descending the river *under full headway, when the engines of the Des Moines were both set to backing strongly;* but the said descending vessel, which

proved to be the "Katie," came on down under full headway, without in any way or manner checking her speed, and when she came within a short distance of the Des Moines, *she turned her bow nearly across the channel* (or squarely quartering) *toward said island*, and in this position she ran *into* and *upon* the said steamer "Des Moines" on her larboard bow, and knocked her stem band loose, and thus, with full speed, went on tearing and breaking herself. She passed on toward said island *until she got near the middle of the river, then* those on board signalled to the Des Moines that the "Katie" was sinking, when the Des Moines went to her and took her over to said Diamond Island, where she sank; that prior to and up to the said collision no signals were given or answered by the pilot in charge of said Katie, nor were any signal-lights out on said Katie, to warn ascending vessels of her approach; that prior to and at the time of said collision said steamer Des Moines was skillfully and prudently navigated, was in her proper place *near the Indiana bank, and was running the course indicated by her signals;* that prior to and at the time of the collision said steamer Katie was *not* in her proper place for a descending vessel, *she was running near the Indiana side on the point of the bend*, when *her proper place* was out in the middle of the channel, *at least three hundred yards from said Indiana shore;* that she never answered the signals or two whistles made as aforesaid by the Des Moines; that she had no signal-lights *visible* to warn approaching vessels; that those in charge of the Katie made no effort to avoid a collision, but ran the said Katie as aforesaid into and upon the Des Moines, to the damage of both said vessels as aforesaid; that said collision and damage was *caused solely by the carelessness, negligence, unskillfulness, and recklessness of those in charge of said Katie*, and not by or through any want of care and skill or prudence of those in charge of the Des Moines; that at the time and prior to said collision those in charge of the Des Moines did every thing in their power to prevent said collision and injury; and that after said collision the Des Moines did all that could be done to save said Katie.

"Seventh. Respondent says, &c., that said steamer Katie was not worth $18,000 when she was sunk as aforesaid.

"Eighth. Respondent further states, that the Des Moines was damaged by said collision in the sum of $500, the cost necessary to repair the damage done thereby; wherefore he asks," &c. (Printed Record, pp. 6 and 7.)

A large amount of testimony was taken on each side in support of the issue thus made up. Each boat charged the other with the *sole responsibility* for the collision, and the consequent damage; but, with this difference, that the Katie had the *affirmative of the issue*, and the *consequent burden of proof*.

After the hearing, the district court entered an interlocutory decree, as follows, viz: "That inasmuch as the *fault* of the said steamboat "Katie" and "Des Moines," in the matter of the collision mentioned in the libel in said cause, *was mutual*, the damages sustained by reason of said collision be apportioned and divided equally between the said libellants and respondent." (Printed Record, pp. 10, 11.) At the same time an order was made referring the case to a commissioner, "to ascertain the amount of such damages, and report to the court." (Ib.) He subsequently reported that the loss of the Katie, in consequence of the collision, was total, (Printed Record, p. 12, fol. 22,) and amounted to the whole value of the boat, viz, the sum of $20,670; and that the excess of the damages chargeable to the Des Moines and owners, after the allowance of one-half the damages to the Des Moines, was $10,036 50. (Ib., p. 14.)

To this report the appellant filed exceptions, and amended exceptions, (*ib.*, p. 16–18,) which were subsequently overruled by the court; and a final decree was entered against respondent, Peter Conrad, for the sum of $10,036 50, with interest from the day of the judgment, together with one half the costs of the case. (*Ib.*, p. 19, fol. 35.)

From this final decree, fixing the Katie with "fault," dividing the loss, and awarding them only $10,036 50, instead of the $40,000 claimed, the owners of the Katie did not appeal. Conrad, on the contrary, took an appeal from it to the circuit court, both on the *facts* and the *law* of the case. (*Ib.*, p. 22, fol. 42.) That court, after a hearing of the case, affirmed the judgment of the district court, with costs. (*Ib.*, p. 198, fol., 366.) From that judgment Conrad, the owner of the steamboat Des Moines, has appealed

to this court, and he now asks a re-examination of the facts and the law of the case.

The opinion of the circuit court is not given in the record; but it is reported in 1 Dillon's Circuit Court Reports, (p. 78–85,) and in assigning errors and arguing the case, a reference will be made to it, for the reasons given by the court for its judgment.

Assignment of Errors.

I. The circuit court erred *on the law and the facts*, in holding that the steamboat Des Moines was *in fault;* and that her owner was, therefore, responsible for one half the damages and costs, because she was is fault in the following particulars, viz:

1st. Because she had no look-out. 2d. Because she had no licensed pilot. 3d. Because she was not in her proper place in the river at the time of the collision, and had failed fully to "justify" or "account" for her position in the river at that time.

II. It erred *on the law*, in regard to the *measure of damages*, in overruling the exceptions of the respondent to the commissioner's report. (For exceptions, see Printed Record, pp. 16–18.)

III. It erred in affirming the judgment of the district court.

Argument for Appellant.

This appeal presents two classes of questions. The first class consists of questions of *fact*, and relates to the main question: *Was the steamer Des Moines in fault in producing the collision?* The second class consists of questions of *law*, and relates to legal causes of responsibility, and to the consequent measure of damages, in case the Des Moines shall be found to have been in fault.

I.

Was the steamer Des Moines in fault in producing the collision?

We start in this investigation without the original burden of proof, and with the advantage that it has already been decided in this case that the Katie, whose owners, in the beginning, charged *the whole responsibility* for the loss upon the Des Moines, has itself been decided to have been in fault, and to have been a producing cause of the collision. This was decided by the district court on the first hearing, and no appeal was taken by her owners from that decision.

This must, therefore, be regarded as an admitted fact. (The Gray Eagle, 9 Wallace, U. S. R., p. 511; Chittenden *v.* Brewster, 2 Wallace U. S. R., p. 196.) The same conclusion was also reached by the circuit court in its judgment affirming the judgment of the district court, from which judgment also no appeal has been taken, nor could be taken, to this court by the owners of the Katie.

In the opinion of the circuit court, as reported in 1 Dillon's C. C. Reps., p. 79, it was held, that the Katie was in fault: 1st. Because her signal-lights were not in proper places. 2d. Becuse she had no look-out, as required by law. And 3d. Because her master was not at his post, but away from it without cause. (*Ib.*, pp. 83, 84, 85.)

In addition to this, there is evidence in the record tending to show that the pilot and engineer of the Katie, on duty at the time of the collision, were intoxicated. Augustus Mellon, her pilot, admits that he had been drinking; that he had taken two drinks along about the middle of the day on which the boat left Evansville. (Printed Record, p. 58, x-int. 184 to 191.) Captain McConnell testifies that Mellon was *duly sober* when the boat left Evansville, *because* he backed the boat out as nicely as any one could have done it; that he was tried right there, and did not run into the Vulcan, as a druken man would have done. (*Ib.*, p. 34, x-int. 103.) But, unfortunately for this evidence of his sobriety, Mellon, the pilot, on his cross-examination, testifies that he did not take the boat out of Evansville; that this was done by his partner, James Damron; and that he (Mellon) did not go on duty till one and a half or one and a quarter hours after she left port. (*Ib.*, p. 47, x-int. 1 to 5.)

This partner, when interrogated on the subject and asked his opinion as to whether Mellon had been drinking any intoxicating drink that night, says: "I don't think he had drank to *any excess* up to the time I left him in the pilot-house, after I had been up to see him after supper; *whether he drank any after that, I can't say.*" "If I may be allowed to judge from his appearance and actions after the collision, *I don't think he had indulged in whiskey to such an extent* as to make it unsafe for him to stand at his watch." (Printed Record, p. 92, ans. to quests. 5, 6, 7, 8, and 9.) He does not pretend to deny that Mellon had been drinking; but limits his opinion to the point, that he had not been drinking *to excess.*

Contrary to this opinion is the testimony of the clerk, the captain, and the pilot of the Des Moines, when they saw him immediately after the collision.

THOMAS W. SINGER, the clerk, testifies that, "just as she (the Katie) struck us, the pilot of the Katie left the pilot-house and jumped into the river. I saw a man jump out of the pilot-house on to the roof, and then jump into the river. As soon as I saw him jump, I went down stairs and helped pull him out, as he came alongside of our guards. *After we got him on deck, he went back and crept under the boilers, and lay down there.* Soon as I saw how the boats were, I took him up stairs and gave him a suit of clothes to put on, in the place of his wet ones. *He was then so drunk he could not stand up at all. I had to help him up stairs.* As soon as he got on his clothes he went to bed, and I didn't see him until next morning. He said he was the Katie's pilot, on watch at the time of the collision; his name, Gus Mellon." (Printed Record, pp. 104–105.) Cross-examination: "The captain was the only one on the Katie that I considered *sober.*" (*Ib.*, p. 106, fol. 212.)

Capt. PETER CONRAD testifies, that he saw the pilot of the Katie in the cabin of the Des Moines. He says, "*I thought he was as drunk as a man could be.* He was like a drunken man. He seemed to be helpless. From the appearance of the man, *I thought he was dead drunk.* After

they changed him, they put him to bed. I went into his room then, and *he spewed and done everything else in his room.* It was a pretty bad looking sight; *it was the worst sight that ever I smelt or ever I saw in my life.*" (Printed Record, p. 144; int. 80 to 86; see also, *ib.*, pp. 124–'5, x-int. 114 to 126.)

ROBERT DUNLOP, the pilot, testifies as follows:

"122d int. How long have you known this man, Mellon? *A.* Ever since I. have been about Smithland; before he went to steamboating at all.

"123d int. What is he, sober or otherwise? *A. Yes, he is sober when he can't get whiskey.*

"124th int. Where did he go when he came on board your boat? *A.* Well, I don't know; I wasn't down in the cabin then.

"125th int. Where did he stay that night? *A.* He slept in the pilot's room.

"126th int. In your room? *A.* Yes.

"127th int. What was the condition of your room after he was there? *A.* It *smelt* like a *whiskey barrel* after he got out of it.

"128th int. Did you *talk* with him before he went to bed? *A.* No, sir; he just hung his head down, and never looked at me. *He looked like he had done something he was ashamed of*, and I don't blame him either." (Printed Record, p. 135.)

Captain McConnell, of the Katie, when cross-examined in regard to the condition of her engineers at the time of the collision, testifies that Merriman, the second engineer, on watch at the time, *was sober;* but he admits that the first engineer was *not quite sober*, judging from what he saw before the Katie left port; but that he does not remember to have seen the second engineer when he went on watch, or just before the boat started. (Printed Record, p. 35, x-int. 110 to 115.)

But the testimony of John Gillan, the first assistant engineer of the Des Moines, shows what the condition of Merriman, the second engineer of the Katie, was immediately after the time of the collision:

"31st int. Did you see any of the officers of the other boat? *A.* Yes.

"32d int. Whom did you see? *A. The engineer.*

"33d int. Did you notice anything in particular in reference to *him? A. I noticed, I thought, he was under the influence of liquor.*

"34th int. What made you think so? *A.* He would come up on the foot-box where I was; *came stumbling up there,* and, says he, "You have got an old Missouri fellow that will knock the fur off any of them;" he had reference to the Des Moines; she used to be a Missouri river steamer." (Printed Record, p. 146.)

Again, on cross-examination. "43d x-int. Whereabouts was it that you saw the engineer of the other boat? *A.* Up on the foot-blocks of the engine-room of our boat.

"45th x-int. Did you have a talk with him? *A.* Yes.

"46th x-int. How long did he remain down there? *A.* But a few minutes, and then he went up stairs.

"53d x-int. Did you have any talk with him there? (up stairs.) *A.* No.

"54th x-int. What was he doing up stairs? *A. Talking and drinking around.*

"55th x-int. He drank after he came on your boat? *A. Yes; and I think he drank before he came on there.* (*Ib.*, pp. 148 and 149.)

This evidence, tending to show that the pilot and engineer of the Katie, at the time of the collision, were intoxicated, (although denied by them,) is strongly corroborated by the facts of the collision itself, as they will be developed hereafter.

In marked contrast with this evidence, however, is the fact, that there is not a suggestion by the libellant, nor a particle of evidence from the beginning to the end of the case, tending to show that the pilot or any of the officers of the Des Moines were intoxicated. The only pretence is, that the pilot of the Des Moines was not competent, because he was not a *licensed* pilot.

But, the judgment of the circuit court, finding the Katie to have been in fault, and the evidence of the intoxication of her pilot and engineer, at the time of the collision, are

important in this connection, only so far as they tend to narrow the field of inquiry, and to furnish an adequate cause for the collision; and so far as they thereby tend to dispense with the necessity for seeking another cause, which creates a necessity for fixing a share of the responsibility upon the Des Moines.

In the reported opinion of the circuit court, the Des Moines was held responsible for one half the loss, for the reasons specified in the assignment of errors. 1st. Because she had no look-out. 2d. Because she had no licensed pilot. And 3d. Because she was not in her proper place in the river at the time of the collision, and had failed fully to "justify" or "account" for her position in the river at that time. (See 1 Dillon's C. Court Rep., pp. 79, 84, 85.)

It will be convenient to follow this order, in the examination of the case. The first two grounds raise preliminary questions of *law*.

1. Was the Des Moines in fault, and therefore partly responsible for the collision in this case, because she had no look-out?

Although it has frequently been decided by this court that a vessel is in fault that has not a *special* look-out at the time of a collision, yet it has recently held, in two cases, that this fact is immaterial in fixing responsibility for the loss, unless it can be seen to have *contributed* to the production of the loss.

In the case of The Farragut, (10 Wallace U. S. R., p. 339,) Mr. Justice Bradley, on this point, says:

"It is perfectly evident that the absence of a special look-out *had nothing at all to do with the happening of the accident, and therefore it can have nothing to do with fixing the liability of the parties.*"

So again, in the case of The Fannie, (11 Wallace U. S. R., p. 243,) Mr. Justice Strong says:

"We do not think it worth while to discuss the question whether the look-out on the schooner was sufficient. *If it was not, it can make no difference; for the want of a proper look-out did not contribute to the disaster.* If the schooner held

her course, it was all that the steamer had a right to require, and, whether she had a proper look-out or not, it was her duty to do precisely what she did."

In this case it is evident that the want of a special look-out had nothing to do with the happening of the collision. The libel itself attributes it to an entirely different cause. It alleges "that at the time said steamer Des Moines came in sight, *she* was ascending the Ohio river at the distance from the Katie of from *one-quarter to half a mile*, and *near the right or Indiana shore of said stream;* that *about* the time said vessels came in sight of each other, *the steamer Des Moines gave two sounds of her whistle;* that at the time the Des Moines sounded her whistle the steamer Katie was *descending* the Ohio river near the middle of said stream; that the Katie immediately answered the signal of the Des Moines by giving two sounds of her whistle, and continued down stream, *bearing towards the Kentucky or left shore* of the Ohio river, and at the distance of three hundred yards from the Indiana shore; that a few moments thereafter *the steamer Des Moines suddenly turned her course towards the Kentucky shore in the direction of the Katie*, and, before a collision could possibly be avoided by the Katie, *struck the said Katie on the starboard bow*," *&c.* (Printed Record, p. 2, fol. 3.)

The answer to the libel admits and alleges that "the pilot of the Des Moines on watch saw something in the river, about one-half mile distant, which he supposed was a steamboat coming down *on the Indiana side* of the river, and about one hundred or one hundred and twenty-five yards from that shore; that the pilot on the Des Moines at once blew his whistle twice, thereby indicating that the Des Moines would pass up along the Indiana shore," &c, (Printed Record, p. 6;) and, while denying the Katie's version of the facts, proceeds to allege that the Des Moines held her course, but that "the Katie came on down under full headway, without in any manner checking her speed; when she came within a short distance of the Des Moines *she turned her bow nearly across the channel*, (or squarely

quartering,) *toward said Diamond Island*, and in this position she ran into and upon the said steamer Des Moines on her larboard bow, and knocked her stem band loose, and thus, with full speed, went on tearing and breaking herself." (*Ib.*)

Each side charges that the collision arose from a failure on the part of the other side to take and to keep the course indicated by the signals of the Des Moines, *and from a sudden change of course on the part of the other boat.* Such is the main issue in the case, to the support of which the evidence is *directed* on both sides; and, *therefore*, under the late rulings of this court just referred to, the want of a special look-out cannot be regarded as a *fault*, fixing the Des Moines with responsibility for the collision, and the circuit court, in holding that it was so responsible, committed an error, for which its judgment ought to be reversed.

2. Was the Des Moines legally in fault; and, therefore, partly responsible for the collision in this case, because she had not a licensed pilot on board at the time of the collision?

It is admitted that the act of August 30, 1852, referred to by the court below, (1 Dillon's C. C. R., pp. 84, 85,) required the steamboat Des Moines, as a steamer carrying passengers, to have a *licensed* pilot, (1 Brightly's Dig., U. S. Laws, pp. 853, 854, §§ 7–10;) and that, ordinarily, under the general rule, the Des Moines would be in fault in this case, because she had not at the time of the collision a pilot regularly licensed for the Ohio river. But we claim that she was not in fault in this case for that reason, because, under the special facts of this case, she came within *the exception* made by the proviso of the 10th section of that act. That section and proviso are as follows:

"It shall be unlawful for any person to employ, or any person to serve as engineer or pilot, on any such [passenger] vessel, who is not licensed by the inspector; and any one so offending shall forfeit $100 for each offence: *Provided, however*, That if a vessel leaves her port with a complement of engineers and pilots, *and on her voyage is deprived*

of their services, or the services of any of them, without the consent, fault, or collusion of the master, owner, or any one interested in the vessel, *the deficiency may be temporarily supplied, until others, licensed, can be obtained.*" (1 Brightly's Dig., U. S. Laws, p. 854, § 34.)

The undisputed facts of the case show, that the steamboat Des Moines had been impressed into the service of the United States during the war, and was engaged in transporting troops and supplies from Cairo to Nashville, and that she was fully provided with pilots, &c., for that trade, as was required by law; that on her last trip from Cairo to Nashville, in November, 1864, and while at Nashville, she was suddenly and unexpectedly ordered by the quartermaster there, under the pressure of a military emergency, to change her destination, and take on board a part of a regiment of troops for Louisville, Kentucky; that the captain and owner objected to this service, on the ground that he had not a Louisville pilot; that his pilots were only licensed between Nashville and Cairo; that these objections were overruled by the quartermaster, and that the captain was commanded to take the troops on board and proceed on the voyage; that he did so, after an ineffectual attempt to get a Louisville pilot at Nashville; that before leaving he was promised such a pilot at Smithland, situated at the mouth of the Cumberland river, where it joins the Ohio; that he proceeded on the voyage and arrived safely at Smithland, where again renewed but ineffectual efforts were made, both by the officers of the Des Moines and by the quartermaster at that point, to obtain a Louisville pilot; that is, one licensed for the Ohio river from that point to Louisville; that it being found impossible, at that time and place, to find a licensed pilot from Smithland to Louisville, they employed R. A. Dunlop, the best man that could be found then and there, to act as pilot until a licensed pilot could be got; and that he accordingly took charge of the Des Moines and piloted her from Smithland to Evansville, where a regularly licensed pilot for the Ohio river was obtained. (See testimony of Singer, Printed Record, p. 105,

Ans. 3, 4, 5, and 6; Cross-exam., *ib.* p. 106, fol. 212; *ib.*, p. 108, of Capt. Conrad; *ib.*, p. 109, 110, Ans. 5 to 22; Cross-exam., p. 119; Cross-int., 8 to 17, of R. A. Dunlop; *ib.*, p. 125, 126, Ans. 5 to 8; p. 133, 134, Ans. 99 to 104; *ib.*, p. 130, Ans. 68 to 71, of Manly; *ib.*, p. 142, Ans. 41.)

Now, we claim that in this case everything was done which the statute requires, in regard to having a *licensed* pilot on board of the Des Moines at the time of the collision. The regular voyage of the Des Moines from Nashville to Cairo was changed, under an emergency created by military necessity, to a voyage from Nashville to Louisville; that for this voyage she was properly supplied with a licensed pilot for the Cumberland river *from Nashville to Smithland;* that vigorous but ineffectual efforts were made to obtain a licensed pilot for the Ohio river *from Smithland to Louisville*, both at Louisville and at Smithland; and that therefore the Des Moines left the port of Nashville with a competent pilot; but that at Smithland, on her voyage to Louisville, *she was deprived of the services of a licensed pilot* without the consent, fault, or collusion of the master, owner, or any one interested in said vessel; and that *the deficiency was temporarily supplied* by the employment of Dunlop (an unlicensed pilot) *from Smithland to Evansville*, where a licensed pilot could be and was obtained.

It is evident, therefore, that every requirement of the act of Congress called for under the special circumstances of the case was fully complied with; and, if so, that the circuit court erred in holding, as matter of law in this case, that the Des Moines was legally in fault, and therefore responsible for one-half the loss and damages caused by the collision, because she did not have a licensed pilot on board at the time of the collision.

But admitting, for the sake of argument, that, abstractly considered, the Des Moines was technically in fault for not having a licensed pilot on board at the time of the collision, still we contend that, upon the principle before recognized and applied in the matter of the absence of a proper lookout, the Des Moines cannot legally be held to have been

in fault so far as to make her owner responsible for one-half the loss and damage resulting from the collision, *unless it is evident* that the want of a *licensed* pilot contributed to or was instrumental in causing the collision; and that therefore the circuit court erred in law in holding, as it did, that *the mere absence* of a licensed pilot, in and of itself, apart from all consideration of the actual skill and competency of Dunlop, the pilot on board of the Des Moines at the time of the collision, to navigate a vessel, was sufficient legal evidence of fault, on the part of the Des Moines, to make her owner responsible for one-half the loss and damage resulting from the collision.

The question just considered, it will be observed, is a question of *law*. But the question as to the actual skill and competency of Dunlop, the pilot on board the Des Moines, before and at the time of the collision, is a question of *fact*, which we now proceed to consider. This question, however, is not as to the actual propriety of his conduct on that occasion, although intimately connected with it, but as to his general skill and competency as a pilot, and as to his consequent ability as such to meet all the demands of the situation at the time and place of the collision. The propriety of his actual conduct on that occasion will be considered hereafter.

What, then, were the pretensions of Dunlop as a pilot in point of fact? Was he competent to act as pilot of the Des Moines?

It appears from the evidence that he had been steamboating, more or less, from the beginning of 1841 till November, 1866; that is, for a period of twenty-five years. That at the latter date he was engaged *in piloting* on the Cumberland river from Smithland, at its mouth, to Nashville. (Printed Record, p. 125, Dunlop's test., ans. 3 and 4; Ib., p. 133, ans. 86 and 87.) That he was a *licensed pilot* in that trade at that time. (Ib., Conrad's test., p. 118, ans. 141; Little's test., p. 163.) That previously *he had acted as mate on the Ohio river about* 12 *or* 15 *years.* (Mellon's test., ib., p. 45, ans. 66.) That his first trip and boating

experience was over the part of the Ohio river now in question, and that he had been at it more or less ever since. (Dunlop's test., ib., p. 134, ans. 105.) That in the spring of 1864 he had acted as assistant pilot on the steamer Hornet, and had passed through the Indiana chute, the scene of the collision. That only a couple of months before the collision he had also assisted in piloting the steamer "Prairie Rose," for Smithland to Evansville, passing through the same chute. (Dunlop's test., Printed Record, p. 138, ans. 46 to 53.) That he was recommended at Smithland by Captain Mills, an old and esteemed steamboat man, as *one fully competent to pilot the Des Moines*, although he had no license. (Singer's test., Printed Record, p. 104, ans. 5; Conrad's test., p. 110, ans. 19 and 20.) That his reputation as a pilot and river man on the Cumberland river was of the first class. (Little's test., ib., p. 163.) That his general behavior, as pilot of the Des Moines on the Ohio river before the collision, was unexceptionable—"as good as any man could do." (Conrad's test., ib., p. 117, ans. 135 to 143, thus directly contradicting Wolfendale, p. 64, fol. 127.) And that in the judgment of Manly, the Cairo pilot, who was on board and witnessed his conduct as pilot on the Des Moines after she left Smithland, he "handled" the boat well, before and at the time of the collision, *and did everything to avoid the collision which a man could do, except landing the boat.* (Manly's test., ib., p. 141, ans. 34 to 38.)

The only objection made by the libellant's witnesses to his compentency as an Ohio river pilot was, that he had not a *license*, the pilots' "*diploma*," although at the same time it is admitted, that he had such knowledge of that river as his employment as "mate" for twelve or fifteen years thereon would give. (See Mellon's test., Printed Record, p. 45, ans. 62 to 66; Luty's test., ib., p. 83, ans. 7; Boyce's test., ib., p. 84, ans. 8 and 9; p. 85, ans. 10; Duncan's test, ib., p. 87, ans. 4 and 5; Damron's test., ib., p. 89.)

The fact that he had not a "license" as pilot for the Ohio river was admitted in the beginning, at the very time

of his employment as pilot of the Des Moines, and has never been denied; but only the inferences attempted to be drawn from that fact, that therefore he did not possess the knowledge and skill necessary for safely piloting the Des Moines, and that her collision with the Katie in the Indiana chute was a direct consequence of his lack of knowledge and skill as a pilot.

This inference is negatived and overthrown not only by the evidence just presented, but by the conclusive fact that he was licensed as a pilot for the Ohio river, from Cairo to Louisville, in December, 1864, the next month after the collision in question. (Printed Record, Dunlop's test., p. 133, ans. 88 to 90.) This fact shows that, if he did not have a license for the Ohio river at the time of the collision, it was not for his want of competency, but only *because he had not applied for it.* And further, that his conduct at the time of the collision did not prevent him from obtaining a license shortly afterwards.

Thus it clearly appears that the circuit court erred, not only in point of law, but in point of fact, in holding that the Des Moines was in fault, and that her owner was therefore responsible for one-half the loss and damage caused by the collision, simply because the pilot on board at the time was not a *licensed* pilot.

3. We are now prepared to examine the third and last ground of the circuit court, for holding, that the Des Moines was in fault, viz: because she was out of her proper place in the river at the time of the collision, and had failed fully to "justify" or "account for" her position in the river at that time.

Was she in fault in this particular?

The answer to this question turns entirely upon the action of the pilot, both before and at the time of the collision.

Having already shown that the pilot of the Des Moines was *generally competent* as a pilot for the performance of his duty as such, the first important question is, whether at the time and place of the collision there was *any special*

necessity for extraordinary skill and ability to meet all the demands of the occasion.

The evidence is clear that *there was not.* Without going into the particulars of the evidence, it will be sufficient to state, that it is substantially agreed by both sides, that the collision occurred in the Indiana chute, where there was abundance of room to pass, on the 22d of November, 1864, about nine o'clock of a *starlight* night, when objects in the river could be seen at least to a distance of half a mile, and at a point nearly opposite to, or a short distance below, the *head* of Diamond Island, which divides the Ohio river about equally at that point; that at that time *the water was high*, and that for that reason, there was no necessity for following any particular *channel*, because, from the unusual depth of the water, boats could pass on either side of the island and in any part of the river. (Mellon's test., printed Rec., p. 49, ans. and int. 35–37, Damron's test., *ib.*, p. , ans. 17; Singer's test., p. 105, fol. 211; Conrad's test., *ib.*, p. 125, ans. 156; Dunlop's test., *ib.*, p. 128, ans. 24 to 28; Manly's test., *ib.*, p. 141, ans. 23; p. 143, ans. 4; Inhoff's test., p. 157 cross-exam., fol. 293.)

Such being the fact, it is evident that no particular knowledge of "the channel" was necessary; and that any one having the simplest knowledge of the duties of a pilot, (even if he had never piloted a boat in that part of the river before,) was competent to act as pilot at that time and place.

The next question was, what was *the usual course of navigation* for ascending boats at that point?

It is proved by the testimony on both sides, that the *usual course* for ascending boats at that point was to take the left-hand side, and to keep near the Indiana shore, for two reasons: First, in low water, because the channel then and there *hugged* the Indiana shore; and, second, in high water, because, as it is obvious, that course avoided the stronger current of the middle of the river.

Mellon's (pilot's) test. "89th int. Do you know the course of the channel down towards the foot of the island,

where it hugs the Indiana shore? *Ans.* At the foot of the island *you keep pretty much in the island* [middle?] *till you get above the foot of the island, then you hug the Indiana shore,* and then round close up to West Franklin, above the head of the island." (Printed Record, p. 46; *ib.*, p. 49, x-ints. 2, to 29.)

Damron's (pilot's) test. "The water was tolerably high at that time; it was at the stage which we considered *a shore-running stage for boats of our size.*" "What I mean by a *shore-running stage is, the river was high enough for an ascending boat to run the shore, if the pilot desired it.* As to the size and tonnage of the Des Moines I do not know much; I suppose *she* was a 600 or 700 ton boat; the Katie, I suppose, was about a 250 or 300 ton boat." (Printed Record, p. 90, ans. 12 and 13.)

Dunlop's (pilot's) test. "25th int. Was that (3 fathoms depth of water) high or low? *Ans.* Yes, it was big stage. It wasn't as high as it gets; but it *was high enough for up-stream boats to run the shore close.* It *was,* at particular places." (Printed Record, p. 128.)

"85th int. *Ans.* * * It was a very good stage of water, *and I was running the shore.* (*Ib.*, p. 132.)

"121st int. How near had you run that bend out? *Ans.* That *point;* I would have *kept that side* fully one-half mile farther up, and *then* crossed over on the other point. *That was the way I was running at that stage of water. Up-stream boats run the shore, if possible,* unless there is some *high bar* that they can't run. I would have run that point up until it opened, and then crossed over to the right-bend point again." (*Ib.*, p. 135.) This fully explains the "zig-zag running" of the Des Moines, which Shelby, one of the Katie's witnesses, regarded as evidence of "bad steering."

The libel alleges, the answer admits—and there is no substantial difference of testimony on this point—that, at the time said steamer Des Moines came in sight, she was ascending the Ohio river, at the distance from the Katie of from one quarter to half a mile, and *near the right* (when descending) or *Indiana shore of the said stream.* That *about* the time the said vessels came in sight of each other the steamer Des Moines gave two sounds of her whistle, &c., thereby indicating her intention to take the *left-hand* or Indiana side of the river, (when ascending.) (Printed Rec-

ord, p. 2, fol. 3; *ib.*, p. 6, fol. 11; McConnell's test., *ib.*, p. 26, ans. 24 and 25; Damron's test., *ib.*, p. 91, ans. 20 to 21; Conrad's test., *ib.*, p. 111, ans. 36 to 38; *ib.*, p. 121, ans. 62, 63.)

Thus it appears that the pilot of the Des Moines was acquainted with the usual course of navigation at that point, and that, by his signals, he had announced his determination to follow that course, and to pass on the left-hand side, near the Indiana shore. This was also in accordance with rule 1 of the rules of navigation then in force. (See The Johnson, 9 Wallace's U. S. R., p. 147.) For the advantages of this course, under similar circumstances, see the remarks of Mr. Justice Clifford in the same case, p. 151. That was a case of collision in the East river, between the steamer Johnson, when *descending* that river, (with an ebb tide running out at about three miles an hour,) and the propeller William H. Burden, with a canal-boat in tow, *ascending* the river *against* that current. "Vessels of that description," says he, "proceeding up the river on that side, in that state of the tide, *usually keep close to the shore, as they by that means avoid the downward current in the stream, and get the aid of the eddy or reflux tide near the shore, which facilitates their progress;* and the evidence shows that the propeller, with the canal-boat in tow, was proceeding up the river along that shore, *in the track usually pursued by steam-tugs, in performing towage service, under those circumstances.*

"Boats *descending* the river at ebb tide *usually select the middle of the channel, as their speed is much aided by the current;* and the witnesses generally concur that the Johnson, until just prior to the collision, was proceeding down the river in a course much nearer the center of the stream than the ascending boat, with her tow lashed to her port side."

The intelligence and wisdom of the course adopted by the pilot of the Des Moines are thus vindicated; and accordingly it is agreed by the libel and the answer, and also by the evidence on both sides, that, after the signals of the Des Moines, her proper place was to the left, near the Indiana

shore, and that the Katie's proper place was in the middle of the river or beyond it, towards the island.

For the *Des Moines' place*, see evidence, printed Record, p. 6, fols. 12, 13; *ib.*, p. 2, fol. 3; McConnell's test., p. 27, ans. 58 and 59; *ib.*, p. 39, ans. cross-int. 206; Damron's test., *ib.*, p. 98, ans. 36; Manly's test., *ib.*, p. 140, ans. 9. For *Katie's place*, *ib.*, p. 6. fols. 12, 13; Mellan's test., *ib.*, p. 50, ans. 52 and 53; Wolfendale's test., p. 63, fols. 124, 125; Dunlop's test., p. 134, ans. 106 to 108; Singer's test., p. 105, fol. 211; Manly's test., p. 141, ans. 24 to 28.

What course then did the pilot of the Des Moines, after giving his signals, *actually* pursue?

Two conflicting statements are made on this subject by the witnesses of the Katie, either of which is equally improbable. The first is, that the Des Moines, notwithstanding her signals that she would pass on the left, near the Indiana side, did not do so, but sailed straight for the Katie, as if to run her down.

Wolfendale, the mate, swears, that "as soon as the Des Moines gave the signal to the Katie, *she apparently left the Indiana shore and came out towards us, &c. The Katie was nearly straight with the current*, she might have been a little flanking in her efforts to get out of the way of the Des Moines. The Des Moines appeared to be quartering in the river, with her stern towards the Indiana shore. The boats were at right angles," &c. (Printed Record, pp.63, 64.)

The value of the testimony of this witness is impaired by the fact that he out-swears all the other witnesses of the Katie, contradicts himself as to the place of the collision in the river, locating it in his evidence before the board of inspectors at Pittsburg "about two hundred yards from the Indiana shore, (ib., p. 66, fol. 131, 132;) and in his testimony in this case, "three-quarters of a mile from the Indiana shore." (Ib. p. 64, fol. 126; ib., p. 66.) This location, according to his own evidence, would place the Katie on Diamond Island when she was struck, because, in his cross-examination, he says, "the width of the river from the head of Diamond Island to the Indiana shore

is almost three-quarters of a mile; the width of the channel is three-quarters of a mile between the island and the main shore. I saw the Des Moines when she gave the signal; I suppose we were about a half mile apart." (Ib., p. 65, fol. 128, 129.) He is also directly contradicted by Captain Conrad as to a matter of fact to which he swears, viz, that Captain Conrad took the wheel out of the hands of Dunlop, after the collision, a short distance below Evansville, because of his incompetency as a pilot. (See ib., p. 64, fol. 127; contra, p. 118, ans. 142 and 143.)

He is also contradicted in his statement as to the course of the Des Moines, after giving her signals, by the statement of Mellon, who also contradicts himself.

The second statement is, that the Des Moines, after giving her signals, took to the larboard, and kept that course until she came within 300 yards of the Katie, when she turned suddenly at right angles, and struck the Katie aft of the capstan, on the starboard side.

Mellon, the pilot, swears: First, "she (the Des Moines) blew her whistle for the larboard side. I answered, *and we kept that way until she got within about* 300 *yards of us.* She was coming up; *she turned, when about* 300 *yards from us, at a kind of right angle,* and struck us aft of the capstan, on the starboard side." (Printed Record, p. 42, ans. 13; *ib.*, p. 44, ans. 39.)

Then he contradicts himself, over and over again, as follows:

"86th int. Then what course did she (the Des Moines) take after her signals were answered by you? *Ans. She kept going straight toward us.*"

"87th int. Did she get *at any time any nearer* to the Indiana shore, after the signals were sounded, than she was when you first saw her? *Ans. Well, she got a little—a very little;* she *kinder* turned in towards the shore, and *then,* when she got up within about 300 yards, *she turned towards us.*" (*Ib.*, p. 46.)

Cross-exam.: "20th x-int. Did she *at any time,* from the time you first saw her (the Des Moines) till the time she

blowed her whistle, *alter her course*—her course in coming up the river? *Ans. A very little, sir.*"

"21st x-int. Did she alter it *at all? Ans. Well, I don't know as she did.*"

"22d x-int. What was that course then, from the time you first saw her until the time she blew the whistle? *Ans. She was coming straight up the middle of the river, till she got within about* 300 *yards of us, then* she *turned like as if she was coming over toward the island.*"

"23d x-int. Did I understand you to say, in your direct examination, *that, from the time she blew her signal till the time of the collision, she kept coming straight towards you? Ans. Yes, sir.*"

"24th x-int. Then, from the time she blew her whistle, her course was *continuous and direct—there was no alteration? Ans. No, sir; I don't think there was.* (*Ib.*, pp. 48 and 49.")

"52d x-int. At the time of the collision was the bow of the Katie pointed straight down stream? *Ans.* Yes, sir."

"53d x-int. In the middle of the river? *Ans.* Yes, sir, near the middle."

"54th x-int. And the other boat, I understand, (the Des Moines,) was *at right angles with the river at the moment of collision? Ans. Yes, sir.*" (*Ib.*, p. 50.)

"58th x-int. As I understand you, previous to this change, the Des Moines was going on up the river, then she made this change, and came towards you in this way, and *that placed her right angles with the river? Ans. Yes.*"

"61st x-int. You say *she came round at right angles;* now, in order *to get at right angles*, how must she have gone on her wheels when brought around *at right angles;* must she have gone ahead on her larboard or backed on her starboard? Ans. No, sir; *she was going ahead on both wheels when she struck.*"

"62d x-int. Well, then, *going ahead on both wheels equally* would produce *this sudden position at right angles*, bringing her at right angles across the river? Ans. *I suppose it was because he didn't know how to steer the boat;* I don't know anything else."

"63d x-int. I understand you to say this change was *sudden*, and that she had been *previously going the other way*, then she comes around and places herself in a position that makes her *at right angles with the river?* Ans. *Yes; she was coming straight up the middle of the river till she turned at right angles toward us.*" (*Ib.*, p. 51.)

"169th x-int. Do you recollect making this statement,

or any statement to this effect, in your testimony before the inspectors at Louisville, (near two years before ans. 166:) 'Some little time before the boats approached to about three hundred yards, (in which the witness before placed them,) *the Des Moines seemed to run in toward the Indiana shore*, which was *also the left*, as indicated by her signals?' Ans. I guess I did, sir."

"170th x-int. Then do you think it correct, and do you now state that after she blew her whistles she did turn in towards the Indiana shore, and kept for a time up the Indiana shore? Ans. *She turned a little*, very little, and *kept that way* till she got within three hundred yards or so, and *then she turned out again*, as if going towards the head of the island or bar." (*Ib.*, p. 57.)

A more confused, inconsistent, and contradictory statement of a simple matter of fact was never made by an intelligent man. He swears *alternately* to the two *opposite* statements: 1st. That the Des Moines, after making her signals, disregarded them, and *sailed straight for the Katie*, as if to run her down; and, 2d. That she obeyed her signals, and continued to do so for a time, until she came within three hundred yards of the Katie, or until she came opposite to her, when she turned suddenly, at right angles to the river and the course of the Katie, and struck her on the starboard bow.

There are other witnesses for the Katie, who swear that the Des Moines *appeared* to *come towards the Katie at right angles;* but these witnesses had no knowledge of the movements of the Des Moines, nor of the Katie, until within a few moments before the actual collision, or until within a short time afterwards. Whether it was the Des Moines or the Katie which had changed her course, and which had thereby caused the Des Moines to *appear* to them to be coming towards the Katie at right angles to her course, they could not possibly know. The *appearance* to them would be the same, *in either case. If the Katie had changed her course*, and was in the act of crossing the bow of the Des Moines, (which had *not* changed her course at all,) the appearance to observers on the Katie, at the moment of collision, (who had not seen the previous courses of the

vessels at a greater distance,) would be the same as if the change had actually been made by the Des Moines. This is the difference between *apparent* and *real* truths. The most striking illustration of this difference is an astronomical one. The sun appears to move and the earth to stand still, while the real fact is just the reverse. So, when a passenger on a railroad car, in rapid motion, makes his car the base of observation, *it* appears *stationary*, while the fences and trees are *galloping past him*. So also, when two trains of cars on a railroad pass each other rapidly, the train in which the observer is seated appears for the moment to stand still, while the other train flits by with the apparent motion of both combined. So, in like manner, this class of witnesses on board the Katie, who had no knowledge of her change of course, and who necessarily made her their base of observation, would naturally suppose the change to have been made by the Des Moines, and that she was coming towards them at right angles, when in fact the change had been made by the Katie, and she was in fact in the act of crossing the bow of the Des Moines; and the motion of the Katie, descending the river under full headway, with a rapid current in her favor, at the rate of from ten to thirteen miles an hour, (see test. of Captain McConnell, p. 25, ans. 16; *ib.*, p. 38, ans. cross-int. 165; *ib.*, p. 38, ans. 175; cross-int. 1, of Merriman, the engineer, *ib.*, 62, fol. 121; of Mellon, the pilot, p. 44, ans. 40; and of Frederick, the carpenter, *ib.*, p. 70, fol. 141,) would also naturally be attributed by them to the Des Moines, coming up against the current, whether she was approaching rapidly, standing still, or actually backing with her engines, or floating downwards with the current.

McConnell, Merriman, Frederick, Shelby, Tomlinson, Blake, and Damron, all belong to this class of witnesses.

Captain McConnell says that, after hearing the whistles of the Des Moines, he went below to look after the cattle, and did not know of his own knowledge anything of the movements of either of the boats afterwards, until he saw the Des Moines coming into the Katie, within about 40

feet, *at right angles.* (Printed Record, pp. 24, 25, ans. 12; ib., p. 26, ans. 31; ib., p. 34, ans. 90 and 91; ib., p. 38, ans. to cross-int. 176 to 196; for correction to last, see p. 41.) What was *told* him by the *pilot* and the *mate*, (the only witnesses, as we have said, of the antecedents of the collision,) of course, has no value.

Merriman, the engineer on duty, says: "Am positive I was not out of the engine-room from the time we left Evansville until the time of the collision, &c. Prior to and at the time of the collision, I had no knowledge of the position of the Katie relative to the Indiana shore. I mean prior to the collision. At the time of the collision I knew the position of the boat. She was between 300 and 400 yards from the Indiana shore," &c. (Ib., p. 61, fol. 119.) "Was knocked down immediately by the concussion, and fell toward the starboard side of our boat. Did not lay there long. After I got up, I *immediately* stopped the doctor, and *put the fire out*, as the concussion knocked the tile from between the firebed and the boiler, *and the flames were coming up through*, &c. I had not been away from my post from the time the signal was given until I was knocked down; *then* I arose and stopped the doctor, and *then* went to putting out the fire, as I have stated. I had discovered the position of the Des Moines *before* I commenced to put out the fire," &c. (Ibid., p. 61, 62.) "I looked out of the engine-room *after* she had struck us, and saw the Des Moines lying square across the river. (Ib., p. 60, fol. 116.) I could see the Des Moines at the time of the collision, from the fact that the Katie was not boarded up, as there was nothing but stanchions around." (Ib., p. 63.)

A man who had been knocked down by the collision, and found himself surrounded by fire in the engine-room, was not in a condition to make very accurate observations as to the position of the Des Moines, before trying to put out the fire. But, even if he was, he saw only the condition of things *after* the collision, and can therefore throw no light on the question as to which of the vessels was in fault.

Frederick, the carpenter, says: "I was in the engine-room at the time (the Katie's signals were given.) I started from the engine-room to look out of doors. *I saw a boat near by coming across the river towards the Katie*, which proved to be the steamer Des Moines. Then I went back to the engineer and told the engineer to look out for something—I expected a collision. It was dark at the time. The Des Moines appeared to be from 150 to 300 feet distant. I judge of the distance from the light of the fire-doors of the Des Moines," &c. (*Ib.*, p. 69, fol. 139; *ib.*, p. 70, fol. 140; *ib.*, 71, fol. 143; *ib.*, 72, fol. 145.)

Shelby, a passenger, says: "I was sitting in the ladies' cabin, &c., when I heard two distinct whistles from the steamer Katie; after waiting a short time and heard no response, &c., I went out to see what was the matter. I went out on the starboard or right side, when I discovered a large steamboat coming directly towards our boat, the Katie. The large steamboat was coming towards the Katie from the Indiana shore, *nearly at right angles towards the Katie*, and she, the large boat, struck the Katie at or near the bow, or rather a little aft of the bow, on the starboard or right side. (*Ib.*, p. 73, fol. 147; *ib.*, p. 74, fol. 150.)

Tomlinson, a passenger, says: "About 9 o'clock at night I was sittting at table taking a game of euchre. I heard the whistle or whistles of another boat, &c. In a very few moments after that I was thrown from my seat. Learning that we were run into by another boat, I immediately started down the steps to the boiler deck. I saw then that there was a large hole knocked into our boat, and water was running in very rapidly. *At that time* the Katie was *in the middle of the river*, with her head pointing quartering towards the Kentucky shore. I *then* saw another boat, that seemed to be backing out, with her head towards the Kentucky shore, &c.; she was about opposite our boat in the river." (*Ib*, p. 80; *ib.*, p. 81.)

Blake, a passenger, also says: "I was sitting in the cabin looking on—seeing gentleman playing a game of euchre. I heard a boat whistle twice. The Katie answered prop-

erly two whistles. A few moments after, the Katie was struck, &c. I went to the door to see, &c. I saw the boat that struck us *away off*. *Seemed to me to be a quarter of a mile.* I could see the light. I then ran in, gathered my carpet-bag, and hastened upon the hurricane roof, for some had said the boat was sinking very fast, &c. When I first got upon the hurricane roof, she was *near the middle* of the river, (Katie,) and it was a starlight night." (*Ib.*, p. 81, 82.)

Damron, assistant pilot, says: "As near as I can *guess*, I suppose *we* were about in the neighborhood of 200 yards from the Indiana shore, at the time the collision occurred.

Quest. 16. *How long after the collision* did you see the position of the boat?

Ans. Just as soon as I could get up, put on my boots, and run out forward. I had been to bed with my pants on." (*Ib.*, p. 90.)

Cross-examined. "*I can't say that I witnessed this (collision,) not seeing the other boat until after the collision occurred.*" (p. 92, ans. 4.)

Re-examined. "*Quest.* 1. *Nearest to which shore* was the Katie when the collision occurred; that of Diamond Island or the Indiana shore? Please state as nearly as you can how far she was from the Indiana shore when the collision occurred.

"*Ans.* At the time I *first* went out I think *she* must have been *nearly in the middle of the river*, below Diamond Island and the Indiana shore; if anything, perhaps *a little nearest to the Indiana shore.* As near as I can *guess*, (it being after night,) she was in the neighborhood of *two hundred and fifty* yards from the Indiana shore, I *think*." (p. 100, fol. 199, 200.)

This, it will be remembered, was *after* the collision; *after* he had got up out of bed, put on his boots, and run out forward, on a boat moving at the rate of from ten to thirteen miles an hour, and the other boat backing towards the Indiana shore. The position of the Katie *at that time* furnishes no reliable evidence as to the place where the collision *actually occurred.* The same is true of the like statements of the other witnesses of this class.

Now these, together with the pilot and the mate, were the only witnesses on board the Katie at the time of the collision who have testified in the case.

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pilot, and Wolfendale, the romancing mate, are the only two witnesses who were in a position to swear, and who have sworn to the *more remote antecedents* of the collision; and that, as between themselves, they both contradict each other, and themselves too, in and by their conflicting stories, as to the movements of the Des Moines immediately after she gave her signals, and before the occurrence of the collision.

On the other hand, in opposition to the conflicting statements of these two witnesses, and of those who seem to support them, the testimony of the principal witnesses on board the Des Moines, as to the movements of that boat, are uniform and consistent. They had better opportunities for observation, are more numerous, and are men of higher character, and are consequently more credible.

In this connection, the remarks of Mr. Justice Swayne, in the recent case of the Grace Gridler, are pertinent:

"The witnesses upon each vessel must have known the condition of things, and what occurred *there*. Unless we impute perjury, which we see no reason to do, they are entitled to credence *as to this class of facts*. As to what occurred upon *the other* vessel, *they are liable to be mistaken*, and their testimony is entitled to less weight than the testimony of witnesses who were present." (The Grace Gridler, 7 Wall. U. S. R., p. 200, 201. See also the case of the Syracuse, 9 *ib.*, p. 676, 677.)

The witnesses of the Des Moines concur in the following generalized statements, which are here presented as the results of their testimony:

1st. That after the Des Moines had made her crossing from the island shore to a point near the Indiana shore, she blew her whistles, to indicate her intended course to the left, near that shore; and that she then moved straight

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Now these, together with the pilot and the mate, were the only witnesses on board the Katie at the time of the collision who have testified in the case.

The result of this detailed analysis of the testimony for the Katie, therefore, is, to show that Mellon, the drunken pilot, and Wolfendale, the romancing mate, are the only two witnesses who were in a position to swear, and who have sworn to the *more remote antecedents* of the collision; and that, as between themselves, they both contradict each other, and themselves too, in and by their conflicting stories, as to the movements of the Des Moines immediately after she gave her signals, and before the occurrence of the collision.

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1st. That after the Des Moines had made her crossing from the island shore to a point near the Indiana shore, she blew her whistles, to indicate her intended course to the left, near that shore; and that she then moved straight

up the river on the course indicated by her signals, parallel with the Indiana shore, at the distance of about 40 or 50 yards therefrom.

On this point, see the testimony of Dunlop, the pilot of the Des Moines. (Printed Record, p. 126, ans. 9; Ib., p. 127, ans. 19 to 23; Ib., p. 130, ans. 65, 66; Ib., p. 136, ans. cross-int. 15; his diagram, p. 131, 132; Ib., p. 136, ans. 24th cross-int.; of Captain Conrad, Ib., p. 111, 112, ans. 35 to 44; Ib., p. 123, ans. to cross-int. 91 to 93; of Manly, the Cairo pilot, Ib., p. 139, ans. 6; Ib., p. 140, ans. 7 to 9; Ib., p. 142, ans. 43, 44; of Crowley, a deck hand, Ib., p. 149, ans. 5 to 13; Ib., p. 152, ans. cross-int. 29 to 39; and of Hobach, the watchman, Ib., p. 152, 153, ans. 4, 5; Ib., p. 155, ans. cross-int. 4, 5.)

2d. That the Des Moines kept her course, as indicated by her signals, turning neither to the right hand nor to the left, until she was struck on her larboard bow by the Katie, which vessel was then running at the rate of from ten to thirteen miles an hour.

On this point, in addition to the testimony referred to on the previous point, see the testimony of Captain Conrad, (Printed Record, p. 122, 123, ans. to cross-int. 80 to 83; of Manly, Ib., p. 143, 144, ans. 16 to 18; and of Gillan, Ib., p. 147, ans. to 12th cross-int.)

For the rate at which the Katie was running, see *ante*, p. 25.

Estimates of *time* and *distance*, under the circumstances of a collision, are little to be relied on. (The Carroll, 8 Wallace U. S. R., 304; The City of Paris, 9 *ib.*, p. 637.) But, by calculation, at 10 miles an hour, she was moving over the intervening space between her and the Des Moines at the rate of 293 yards, or 880 feet; that is, at the rate of a mile in six minutes. At the rate of 12 miles an hour, at the rate of 352 yards, or 1056 feet; that is, about a mile in five minutes. And at the rate of 13 miles an hour, she was moving at the rate of 381⅓ yards, or nearly a mile in four minutes; consequently, she would pass over the distance

between her and the Des Moines—that is, from ¼ to ½ a mile—in less than two minutes.

The result of this calculation is confirmed by *the circumstances* testified to by the following witnesses, though differing widely in their *estimates* of the time: Capt. McConnell, Printed Record, p. 24, 25; Damron, p. 91, ans. 23; Capt. Conrad, p. 110, 111, ans. 26; Dunlop, p. 130, ans. 65, 66; p. 132, ans. 78 to 85; Manly, p. 139, 140, ans. 6; p. 143, 144, ans. 16 to 18; Gillan, p. 145, ans. 1 to 5, 19 to 26; Hoback, p. 153, ans. 13 to 18; Inhoff, p. —, fol. 292; Seibert, p. 167, fol. 309.

As to the continued course of the Katie after the collision, see also the testimony of Captain McConnell, p. 34, ans. 97 to 101, cross-int.; of Frederick, p. 70, fol. 141; of Mellon, p. 43, ans. 26; p. 57, ans. 175 cross-int.; of Singer, p. 104, fol. 209; of Captain Conrad, p. 113, ans. 64, 65; p. 114, ans. 70 to 72; p. 116, ans. 115; p. 123, ans. 96 cross-int.; of Dunlop, p. 126, fol. 242; p. 129, ans. 50 to 54; of Manly, p. 140, ans. 14 to 16; of Crowley, p. 150, ans. 15; and of Inhoff, p. 157, cross-exam., fol. 293.

3d. That the Katie, *at the time of the collision*, was *not in the middle of the river*, (where it is admitted she ought to have been, or beyond it;) but that, on the contrary, she had been and was *near the Indiana shore*, as she came rapidly around the *sharp point or elbow on the Indiana shore*, below West Franklin, and above the head of Diamond Island; and that the collision occurred *near that point*, at or below it a short distance, in consequence, 1st, of her position above near that shore, her head being at first pointed towards that shore below, as if indicating her intention to pass *between* it and the position of the Des Moines, which was below, near that shore; and, 2d, in consequence of the subsequent change of her course towards the island, or Kentucky shore, and of her attempt in so doing to cross the bow of the Des Moines, (*thereby putting herself nearly at right angles to the course of that vessel*,) which manœuvre, however, she failed to execute *in time*, and, in failing to do so, struck the Des Moines on the larboard bow of that vessel,

as she lay in her proper position and course below that point, near the Indiana shore.

For evidence on this point, see testimony of Singer, the clerk, Printed Record, p. 105, ans. 7, fol. 209–210, fol. 210–211; *ib.*, p. 106, fol. 212; of Captain Conrad, *ib.*, p. 111, ans. 26 and 27, 39; *ib.*, p. 112, 113, ans. 54 to 63; *ib.*, p. 120, 121, ans. x-int. 45 to 59; *ib.*, p. 122, ans. x-int. 66; *ib.*, ans. x-int. 75 to 77; *ib.*, p. 123, ans. x-int. 84 to 87; *ib.*, 124, ans. x-int. 104 to 106; of the pilot, Dunlop, *ib.*, p. 134, ans. 106 to 108, 115 to 120; *ib.*, p. 137, ans. x-int. 27 to 29; *ib.*, ans. 37 to 44; *ib.*, p. 139, ans. 130 to 131. See also answer of Captain McConnell, *ib.*, p. 40, ans. x-int. 215; of the Cario pilot, Manly, *ib.*, p. 140, ans. 6, fol. 263, ans. 12 to 21; *ib.*, p. 142 and 143, ans. 1, x-int. to 4, ans. 11 to 13; *ib.*, p. 144, ans. 4 and 5; of Crowley, the deck-hand, *ib.*, p. 150, ans. 18 to 21; of Hobach, the watchman, *ib.*, p. 154, ans. 27 to 29, x-exam. from ans. 1 to 10; of Inhoff, the cavalry man, *ib.*, 157, fol. 292; and of Colonel Seibert, a passenger, *ib.*, p. 166, fol. 307.

If the collision occurred at the place and in the manner above stated, the objection made in the opinion of the circuit court, (1 Dillon's C. C. Rep., p. 82,) that, for the Katie to be *quartering across the river, and to strike the Des Moines on the larboard bow, with her starboard bow*, the Katie must have been *between* the Indiana shore and the Des Moines; and that, according to the testimony of the latter, as to her distance (40 or 50 yards) from the Indiana shore, there was *not room for such a position and movement*, is thereby effectually removed. The Katie struck the Des Moines as she came round the corner of the point, while (according to Wolfendale) she was "trying to get away," (Printed Record, p. 63, fol. 125; *ib.*, p. 65, fol. 130,) and thus, they both might have been and were, about the same distance from the shore.

This view of the place and cause of the collision is further confirmed by the glancing blow on her larboard bow received by the Des Moines, and by the nature and extent of the injuries to her resulting therefrom, viz, in rubbing

and scraping her side; in staving in her planks; in leaving the outriggers of the Katie sticking in her side; and by tearing off her stem-band; and by leaving her starboard bow entirely uninjured; all of which effects could not have resulted from the opposite theory of the collision, viz, that the Des Moines had struck the Katie "head on," and at right angles to the course of the Katie.

For the evidence on this point, see the testimony of the following witnesses: Singer's test., printed Record, p. 104, fol. 209; Captain Conrad's test., p. 114–116, ans. 87 to 110; Dunlop's test., p. 134, ans. 110; p. 136, ans. 21, cross-int., to 23; Manly's test., p. 142, ans. 50; Gillan's test., p. 145, ans. 16 and 17; Crowley's test., p. 152, ans. 38, cross-int.; Hicks's test., (the engineer who helped to repair her at Cairo,) p. 158, ans. 8 to 34; cross-exam., ans. 1 to 3; p. 162, ans. 48, cross-int., to 65; Hobach's test., p. 154, ans. 25; Murphy's test., (ship-carpenter,) p. 164, ans. 1 to 1 cross-int.; Summerwell's test., (the ship-carpenter who helped to repair her at Cairo,) p. 164, ans. 5 to 10, directly contradicting the opinion of Damron, the Katie's pilot, (p. 100, re-exam., ans. 2,) and confirming the opinion of Captain Conrad, as to the effect of a direct, or blow "head on," upon the Katie, (pp. 116, 117, ans. 121 to 123.)

It will be carefully observed by the court that the diagram, called "Exhibit H," (printed Record, p. 76,) is a mere fancy sketch, to illustrate the Katie's theory of the collision. It was made merely from an inspection of the injuries to the Katie, by a man who was not present at the collision, and who did not see them till August, 1865, nearly a year after the collision. (Biggs's test., *ib.*, p. 75, ans. 6; *ib.*, p. 78, ans. to cross-ints. 18 to 38; *ib.*, p. 80, ans. 58 to 62.) But the positive testimony of the witnesses for the Des Moines cannot be overcome by such evidence. See the remarks of Mr. Justice Swayne, in the case of The Fairbanks, (9 Wallace's U. S. Rep., pp. 424, 425,) where a like attempt was made. Besides, the testimony of Biggs, from the appearance of the injuries to the Katie, is directly met by the counter evidence of Summerwell, from the ap-

pearance of the injuries to the Des Moines immediately after the collision. (Printed Record, p. 165, ans. 10.)

4th. That by the violence of that blow, the rapidity of the downward current, and the comparatively *passive* condition of the Des Moines at that time, (her upward headway having run out, and her engines being in the act of backing at the time,) her head was carried round and downward by the Katie as she passed, thereby leaving the Des Moines, immediately after the collision, in the position in which she was found, with her head quartering across the river, in the direction of the island or Kentucky shore, and thus fully accounting for her position in the river at that time.

For evidence on this point, in addition to that referred to under the preceding point, see the testimony of the following witnesses: Singer, Printed Record, p. 104, ans. 6, fol. 209; Captain Conrad, *ib.*, p. 113, ans. 66 to 69; *ib.*, p. 116, ans. 115; p. 123, ans. 100 and 101 x-int.; Dunlop, p. 126, ans. 9; *ib.*, p. 127, ans. 17 and 18; p. 134, ans. 119; Manly, p. 141, ans. 33; Crowley, p. 150, ans. 18; Hobach, p. 153, ans. 9; p. 154, ans. 23 and 24; Inhoff, p. 157, fol. 292; Seibert, p. 166, fol. 307.

See also the testimony of these witnesses, showing that the *headway of the Des Moines had run out*, and that she was *backing at the moment of the collision:* Singer's test., Printed Record, p. 105, fol. 210; Conrad"s test., *ib.*, p. 110, 111; p. 116, ans. 116 to 123; p. 120, ans. 43, x-int. to 45; Dunlop's test., p. 126, ans. 9, fol. 241; p. 127, ans. 16; p. 136, ans. x-int. 11 to 13; p. 137, ans. 34 to 36; Manly's test., p. 140, ans. 6, fol. 263; p. 141, ans. 29 to 32; p. 143, ans. 10; p. 144, ans. 3; Gillan's test., p. 145, ans. 1 to 7; p. 146, ans. 21 to 26; p. 147, ans. 9 to 11, x-int.; ans. 24, x-int.; p. 148, ans. 27 x-int.; Hobach's test., p. 153, ans. 16 to 20; Inhoff"s test., p. 157, fol. 293.

The testimony of the Katie's witnesses, that after the collision the Des Moines was seen "backing out" towards the Indiana shore, *corroborates* this testimony, and proves that *she was backing at the time of the collision.* (See McCon-

nell's test., p. 27, ans. 52; p. 33, ans. to x-int. 70 and 71; p. 37, ans. 154, x-int.; Mellon's test., p. 44, ans. 39 and 40; p. 54, ans. to x-int. 120 to 123; Merriman's test., p. 60, fol. 117; Wolfendale's test., p. 64, fol. 126; Tomlinson's test., p. 80, fol. 162; Damron's test., p. 91, ans. 20; p. 93, ans. 14; p. 95, 96, ans. 27 and 28.)

Such are the conflicting statements as to the causes of the collision, made by the witnesses for the Katie on the one side, and by the witnesses for the Des Moines on the other.

Now, which of these several statements is the most credible? Such is the practical question to be determined by this court.

In determining that question, it will be useful, in addition to the considerations already presented, to look—

1st. At the relative attitude and motives of the parties to the controversy.

2d. At the relative rights and duties of the respective steamboats under the circumstances of the case.

3d. At the inherent probabilities as to the truth of the fact in controversy, arising out of common experience and the ordinary motives which govern human conduct; and finally, if necessary, as a last resort, at the question,

4th. Upon whom is the burden of proof in establishing the issue in this case?

Let us glance a moment at each of these considerations.

1st. *The relative attitude and motives of the parties.*

The Katie was navigated and controlled entirely by *agents* and *hirelings*. Neither of her owners was present, exercising that superior care and diligence which a man naturally takes of his own business in preference to that of a stranger, and producing at the same time that wholsome stimulus on the one side, and check on the other, which the personal presence of an owner naturally creates. The agents in whose charge the loss of the Katie occurred, being most probably irresponsible, (as is generally the fact,) the owners of the Katie naturally look for their indemnity to the owner of the Des Moines; and in the attempt, made in this case, they find the ready aid, to say the least,

of those in whose charge the loss occurred, and who are therefore strongly interested in acquitting themselves of all blame.

The Des Moines, on the contrary, was navigated by her owner, a prudent and cautious German, who was personally present at the time, and who therefore knows the facts of the case from beginning to end. If the collision arose from the incompetency and misconduct of Dunlop, the pilot, as is charged by the Katie, he knew it. What this pilot did was done by him under his own eyes; and if he was in fault, all that he had to do, as an honest man, was to admit the fact, and to claim indemnity from the United States, who placed him there. He had undertaken the voyage to Louisville without a licensed pilot, under protest, and by compulsion, under the orders of the quartermasters of the United States, to meet a military exigency, and he had accepted Dunlop, an unlicensed pilot, from necessity; and, therefore, if *his incompetency* was the cause of the loss, the United States would be bound, legally as well as morally, to indemnify him against the consequences of that incompetency. But he knows that the collision *did not* arise from the incompetency or misconduct of the pilot, and therefore he stands here to-day, in fact, though not in form, to defend the United States against an unjust claim. His pertinacity in resisting it, by appeal from court to court, is at once the highest evidence of his sense of its injustice, and of the competency and faithful discharge of his duty by Dunlop, the pilot and agent of the United States, rather than of himself, the appellant.

2d. *The relative rights and duties of the respective steamboats.*

The Des Moines was the *ascending boat*, moving *against* the current of the river in a time of high water, and therefore having less control of her movements. The Katie, on the contrary, was the *descending boat*, moving *with* the current, and therefore having the superior control over her own movements. The relation between these two boats in passing each other was therefore the same as that between a sailing vessel and a steamer in passing each other,

and for the like reason. Their relative rights and duties in passing must therefore be the same.

These were clearly defined by this court in the late case of the Carrol. It was a case of collision between a sailing vessel and a steamer. In that case, Mr. Justice Davis says: "If the two vessels in this case were approaching each other in opposite directions, so as to involve risk of collision, the duty of each was plainly marked out by law. *The steamer was required to keep out of the way, slack her speed*, or, if necessary, *stop and reverse*, while *the schooner was required to maintain her course*, and was not justified in changing it, unless obliged to do so to avoid a danger that immediately threatened her. As the steamer did not keep out of the way, and as the collision did occur, *the steamer is prima facie liable*, and can only relieve herself by showing that the accident was inevitable, or was caused by the *culpable negligence* of the schooner." (9 Wall. U. S. R, pp. 303, 304, 306; The Potomac, ib., pp. 591, 592; The Corsica, ib., 633, 634; The City of Paris, ib., 637, 639.)

The Katie did neither of these things. If, therefore, the premises of this branch of the argument are well taken, then, under this rule, the collision having occurred, the Katie is *prima facie* responsible for the collision, and can only relieve herself by proving *culpable negligence* on the part of the Des Moines.

The Katie, as we have already seen, stands condemned as having been in fault. But under this rule she was also in fault for other reasons: for not having kept out of the way; for not having stopped or reversed her engine; and for recklessly rushing down the Ohio river, at full speed, at night, on a rapid current, in time of high water, when her pilot, Mellon, acknowledges that he saw the Des Moines two miles away, and knew that she was coming up the river; (Printed Record, p. 42, ans. 13;) and when, too, in that stage of water, he could have passed down through the Kentucky channel, on the other side of Diamond Island, if he really had, as he now says he had, doubts as to the skill of the pilot in charge of the Des Moines.

The superior obligations under this rule, of "keeping out of the way," devolved on the Katie, as the descending steamer. The simple and single obligation devolved upon the Des Moines, as the ascending boat, after having made her election as to the side on which she would pass, was to *maintain her course.* Did she do so? That is the main question in this case, and the answer to it is the pivot upon which all the rest turns. Its examination involves the consideration of—

3d. *The inherent probabilities as to the truth of the fact, &c.*

The witnesses for the Katie say the Des Moines did not maintain her course, and they present two opposite statements. But as the first is highly incredible, and as the second destroys the first, it will only be necessary to consider the second.

The second statement admits, that the pilot of the Des Moines, after having made his election to pass on the left, near the Indiana shore, took and continued to pursue that course *until he came within three hundred yards of the Katie,* when, as it alleges, he suddenly wheeled his boat *at right angles* to her former course and to the course of the Katie, and thus *ran out of his way,* as if to strike and sink the Katie.

Now, is this *probable* in the nature of things? Men do not act *without motives.* What *motive* could he have had for doing so? It has not yet been charged that he was *insane* or a *natural fool.* We have already seen that, unlike Mellon, he was a *sober man;* that he had also general competency and skill as a pilot; that he had displayed these qualities in the management of the boat, until he reached a point below the scene of this collision; that he then showed his knowledge of the ordinary course of navigation for that time and place; that he then crossed over from the island shore to near the Indiana shore, where he made his election and sounded his signals, announcing his intention "to run the shore" and to pass on the left, near the Indiana shore; that, by the admission of the hypothesis under investigation, he took and kept that course until

he came within three hundred yards of the Katie, when he *suddenly* changed his course and ran down the Katie. Now, what motive could he have had for this change? Had he not chosen this very course a few minutes before? Was there any necessity to change it? Was there any difficulty in the navigation there—any want of room to pass? No; the libel alleges there was abundance of room ahead of him, to the right of him, to the left of him. Had he or the owner of the Des Moines any *malice* towards the Katie, or any private grudge against her owner, officers, or crew? No; this is not pretended. The libel charges only simple "*negligence.*" The judgment of the court finds the Katie herself to have been in fault; and yet, if the testimony of the witnesses for the Katie is to be believed, it proves a clear and irresistible case of the *willful* and *malicious* destruction of the Katie. But this is negatived by the court below; and again by the prompt and generous assistance rendered by the owner, officers, and crew of the Des Moines, after the collision, to the passengers, officers, and crew of the Katie, and especially by the rescue of her drunken pilot from a watery grave. Was anything to be *gained* by the change? No; every disadvantage to be avoided, every advantage to be gained, by making the election to run by the Indiana shore, still continued to operate in full force, as at first. *Consistency*, if nothing else, required him to *adhere* to the course which he had just chosen. Pride of opinion would have urged him on. Can any probable, or even possible, motive be assigned for *this pretended change in the course of the Des Moines? None.* Absolutely none.

We search the list of human motives in vain for any conceivable motive to induce this change. On the contrary, while on the one hand we find none for it, on the other we find all the original motives which induced the adoption of his first course operating against it, and still urging its continuance. *Did he*, then, *change* his course *at all?* The two principal witnesses for the Katie say he did. On the contrary, the more numerous and more reliable wit-

nesses for the Des Moines, in a body, say that he did not. Now, which of these two classes of witnesses is to be believed? Those who swear that a man has acted not only *without apparent motive*, but *against* every apparent motive; or, those who swear for the *coincidence and harmony* between motive and action?

The answer to that question decides this case, and, we submit, will compel a reversal of the judgment of the court below.

But suppose we are mistaken on that point, and that the case is *still left in doubt;* then the last question recurs, and it becomes important to know, in this conflict—

4th. *Upon whom is the burden of proof?*

In a case of collision, where there has been some fault or neglect, but *on which side the blame lies* is *inscrutable*, or is left by the evidence in a state of *uncertainty*, many of the maritime states of continental Europe have adopted the rule to apportion the loss between the two vessels. (Story on Bailments, § 609.) Such is the practical effect of the decision of the court below in this case. But, by the English and American admiralty law, the rule is different. The logic of our jurisprudence is followed out to its legitimate consequences. He who alleges a fact, must prove it, or fail. In this case, negligence and fault are alleged by the libel. They are denied by the answer under oath, and, to say *the least* of it, the evidence in this case leaves it *in doubt* whether the Des Moines was in fault, in any matter which contributed in any degree to the collision and loss. (See the case of the Johnson, 9 Wall. U. S. R., p. 155.)

The rule in such a case is thus stated by Mr. Justice Swayne, in the late case of the Grace Gridler, (7 Wall. U. S. R., p. 203.)

"Generally, the burden of proof rests on the libellants. Where fault is shown on the part of the damaging vessel, it is incumbent on her to show such fault had in no degree the relation of cause and effect.

"Where there is *a reasonable doubt* as to which party is to blame, *the loss must be sustained by the party on whom it has fallen.*"

In this aspect of the case, such is the fact here.

The burden of proof rests upon the Katie, and it is specially increased by the fact that the Katie, as the descending boat, was under special obligations to keep out of the way; and by the further fact, that she has already been found to have been in fault; and that, being thus in fault, the effort on her part is to shift the whole, or at least a part of the fault and responsibility from herself to and upon the Des Moines, the ascending boat. This cannot be done, either according to the law or the facts of the case.

Thus, it appears that all these additional considerations concur in rejecting the wild, unnatural, improbable, incredible hypothesis of the witnesses for the Katie, and in forcing upon the court the clear conviction, that the course of the Des Moines, once deliberately taken, was not changed, without reason, and against every conceivable motive to the contrary.

If so, then it follows that the *sole* responsibility for the collision rests upon those in charge of the Katie; that in holding the Des Moines to have been in fault, great injustice has been done to her owner, and, consequently, that the judgment of the court below should be reversed.

In a case of collision, where the evidence is almost necessarily conflicting, it is easy to say, "both vessels were in fault: divide the loss." On this principle, such might be the judgment in every case. But this tribunal, as the court of last resort, cannot and will not act upon such a principle, and thereby sanction such a "*rusticum judicium.*"

II.

MEASURE OF DAMAGES.

If we have previously succeeded in showing that the judgment of the court below should be reversed for the errors of law and fact specified and considered in the first branch of this argument, then it will be unnecessary to consider the error also committed by the court in regard to the

measure of damages. But, lest we may be mistaken on that point, we shall consider it briefly.

The commissioner reported to the court, "that the damages caused to the steamboat Katie and her owners, by the collision with the steamboat Des Moines, amounted to the sum of $20,670—the commissioner believing that her cost but a short time previous furnished a better test of her value than vague, general estimates. She cost, as the testimony shows and as was agreed, $20,670." (Printed Record, p. 12, fol. 22, 23.)

But this proceeds upon the basis that the loss of the Katie was *total*. "The evidence adduced," says the report, "shows *sufficiently* clearly, that *the collision resulted in a total wreck of the Katie—in a loss to her owners of her entire value.* An effort was made by her owners to raise her and put her afloat; but, owing to high water and ice, this effort was abandoned in the spring of 1865, and she was never raised." (*Ib.*)

But *when* was this effort made? An exception to this part of the report was made in and by the first amended exception, as follows:

"*First exception.* That the rule of damages adopted by the said commissioner was and is erroneous; that he should have declared the rule in this case to be *the necessary costs of raising and repairing said steamboat Katie;* that the testimony of E. D. Leezer, Thomas Singer, James Rees, and F. L. Humphrey, read in evidence before said commissioner, not only proves and shows that a large part of said vessel was saved, but that she could have been raised and repaired at a cost of $5,000; that the evidence offered and given by the owner of the Katie, on the question of *when* and *what efforts* they made to raise the Katie, was *too vague and uncertain* to authorize said finding *that she could not have been raised and repaired; that the finding of said commissioner*, as stated in said reports, *that said vessel Katie was a total loss, is not supported or warranted by the evidence in the case.*" (Printed Record, pp. 17, 18.)

This exception, with others, was overruled by the district court, (*ib.*, p. 19,) and its judgment thereon was af-

firmed by the circuit court (*Ib.*, pp. 198, 199.) Now, we insist there was error in overruling this exception.

The report itself admits, "that *if* the Katie could have been raised and repaired after the collision, the cost of such raising and repairing would furnish a reasonable measure of the damages caused;" but it says, "this rule is *inapplicable* to the case of the Katie." (Printed Record, p. 12, fol. 22.)

The testimony of E. D. Leezer shows, that he had agreed to raise and repair the Katie for the sum of $5,000, and that he expected to make by this contract from one-third to two-thirds profit on his contract, (*ib.*, p. 175, ans. 6; p. 176, ans. 10;) and further, that this contract was not entered into until "somewhere in December, 1864, within a week of Christmas;" *that he began work on the wreck immediately after the contract was made.* (*Ib.*, ans. 7 and 8.) In a previous deposition he had fixed the time as being from the 17th to the 20th December, 1864. (*Ib.*, p. 186, ans. 3.)

Now, the libel, answer, and evidence in the case show that the collision occurred November 22, 1864.) (Printed Record, pp. 1 and 6, and *passim.*) It thus appears, that *for nearly a whole month no effort was made to raise and repair the Katie.* It further appears that, before the Katie was sunk, Leezer and his bell-boat had finished "wrecking" the steamer Melrose, and that he and his boat were lying idle "in the neighborhood of a month, more or less," before the contract was made with him for raising the Katie. (*Ib.*, Leezer's test., p. 176, ans. 11 to 13.) It also conclusively appears, by the testimony of the same witness, that if the contract to raise the Katie had been made sooner, and the work had been begun sooner, she could and would have been raised before the *second* rising of the water.

As the testimony of this witness on this point is highly important, it is given in full:

"Examination by libellant:

"*Ques.* 3. Did you ever see a steamboat called the Katie? If yea, state *when* and *where*, &c. *Ans.* I have seen the steamboat Katie at Diamond Island, a little below the mid-

dle of the island, in the Ohio river, &c. *It was from the 17th to the 20th of December*, 1864.

"*Ques.* 4. Under what circumstances and how did you come to see her at that time? *Ans.* By being applied to to raise the boat, if possible, by Captain McConnell, who was then, I think, captain of the boat. I went there with a bell-boat to attempt the raising of the wreck. AFTER GETTING THERE, there were circumstances, *by the rising of the river rapidly*, and, after that, *by the ice, that we were prevented from raising the wreck.* We did not get enough off the wreck to pay expenses." (Printed Record, p. 186.)

Cross-examination by respondent:

Ques. 13. *When* did you *abandon* the attempt to raise her? *Ans.* Somewhere in April or May; we lay there during all that ice and high water, watching an opportunity.

Ques. 17. State what you did, and all you did, in trying to save the wreck? *Ans.* After we had arrived there, and found it impracticable to straighten her up and pump her out, we rigged our barges to lift her, and carry her into shore, if possible. AFTER TAKING HOLD [that is, *after* the 17th or 20th of December, 1864, and after the ineffectual attempt to straighten her up and pump her out] the river *began* rising so rapidly, *that we parted our chains, and found it impossible to do anything.* The *ice* came, and disturbed us *again.* We made four efforts, I think.

Ques. 18. Did you at any time use a diving-bell? *Ans.* No.

Ques. 19. In your *first effort* to raise her, could you have raised her *if the river had not been rising? Ans. Yes, sir;* I could have raised her, if I could have straightened her up. *I believe I could have raised her if the river had not risen so rapidly.*

Ques. 20. Had the river been in a rising condition *at any time* during the two weeks previous to the time when you first went to raise her? *Ans. I do not recollect.*

Ques. 21. If you had commenced trying to raise her, the Katie, *ten days sooner*, would you have been interrupted by the river rising? *Ans. I cannot tell.* (*Ib.*, p. 187–188.)

This is all the evidence offered by the libellant to show that the loss of the Katie from the collision was a "total loss." From an examination of it, it is perfectly clear that, if the contract to raise her had been made shortly after the

collision, and if *prompt* and *diligent* efforts had been made under it, the loss would not have been total; that, if *nearly a whole month* had not been allowed to pass *in doing nothing*, she could have been, and would have been, raised and saved. That the failure to raise and save her resulted directly from the *culpable negligence of the libellants*, in postponing the effort to raise until it was prevented by high water and ice, in the winter and spring following; that the damages were thereby unnecessarily exaggerated and increased, by the negligence of the libellants, from the cost of raising and repairing her, viz, $5,000 to $20,670, her full value.

We contend, therefore, that this exception to the report of the commissioner is fully sustained, and that the courts below erred in overruling it, and in holding, as they did, that, under the facts of the case, the loss was total; and that the measure of damages was the full value of the Katie, instead of the cost of raising and repairing her—the only direct damage resulting from the collision for which the appellant can be responsible in any event.

JOHN A. WILLS,
Counsel for Appellant.

Supreme Court of the United States.

No. 108.—December Term, 1871.

PETER CONRAD, Appellant,

vs.

H. K. HAZLETT and A. WEAVER, Appellees.

F. A. DICK,
Of Counsel for Appellees.

Pearson, Printer, corner 9th & D sts., Washington, D C.

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Brief of F. A. Dick for Appellees in reply.

The collision between the Katie, the descending boat, which was sunk, and owned by the libellants, the appellees here, and the Des Moines, happened in a bend of the Ohio river, near the head of Diamond Island, on the Indiana side. The channel ran on the Indiana side, and before the Katie rounded the point above the island she was seen by the pilot of the Des Moines, who, in ascending crossed the river from the island shore, from point C on plat at page 131, running thence to the point F towards the Indiana shore and thence on a curved line up the river; on arriving at F he signaled to the Katie by blowing his whistle twice. The Katie then turned to larboard, heading across the river.

When the boats came together the Katie was moving rapidly, diagonally across the river with her head towards the island, and her starboard side was cut into by the stem of the Des Moines nearly to the capstain, so that she immediately filled with water and sunk. The larboard side of the Des Moines was towards the Katie as she struck.

First. In Chamberlin vs. Ward, 21 How., 548, is reported the case of the propeller Ogdensburgh, which sunk the steamer Atlantic, in Lake Erie, in the night, and the principles and facts of it seem to control this case.

The propeller was found in fault—

1st. Because she did not have a competent and skillful officer in charge of her deck, and it appeared that this contributed to the collision.—(p. 564.)

2d. Because she did not have signal lights properly displayed, *as required by law*.—(565.)

3d. Because the officer in charge of her deck "neglected *seasonably and effectually* to change the course of the vessel, and persistently kept her on her course after he discovered the signal lights of the steamer, *rendering it highly probable* that it was this error, no less than the former, which contributed to the collision."

"Many circumstances tend to show that if he had adopted the usual precaution the disaster might have been avoided. Comment upon this proposition is unnecessary, as, *in its legal aspect*, it imputes to the propeller a palpable violation of the rules of navigation. The officer in charge of the deck admits that he saw the signal lights of the steamer when she was three miles distant, and he states that the propeller kept precisely on her course, *until he saw that the steamer was very near*, and then he says he gave the signals to stop and back."—(p. 566.)

Next, as to the faults of the Atlantic, which contended that as she had proper lights and the propeller had not, that the propeller was liable for full damages. Not so, say the court.—(p. 567–8.) "If the one having such lights *actually sees the other vessel, as she approaches*, in ample season to avoid the collision, and neglects to take any proper precaution to prevent it, and it ensues, it cannot be said, in such a case, that all the loss resulted from the neglect of the vessel without such lights, as the collision might have been prevented, and, but for the negligence or perverseness of those in charge of the ves-

sel showing lights, would never have occurred. All we mean to decide is, that the neglect of the propeller to show signal lights did not vary the obligations of the Atlantic to observe the rules of navigation, and to adopt all such reasonable and necessary precautions to prevent the collision, as the circumstances in which she was placed gave her the opportunity to employ."—568. (See also The Gray Eagle, 9 Wall., 505.)

"The Atlantic is chargeable with fault—

"1st. Because the officer in charge of her deck did not exercise proper vigilance to ascertain the character of the approaching vessel, after he discovered the *white* lights. * When he first discovered those lights the two vessels were at least a mile apart. * Those white lights, though not the signal lights required by the act of Congress, were, nevertheless, sufficient to apprise the officer on the deck that *a vessel of some sort was approaching.*"—(p. 568.)

2d. The Atlantic is in fault because the officer "*did not seasonably and effectually* change the course of the vessel or slow or stop her engine after he discovered the white lights. * On this ground we think the steamer *was clearly in fault.*"—(569.)

3d. "The Atlantic was in fault because she did not have a vigilant and sufficient look-out. No person was assigned to that duty, except the second mate, who also had charge of the deck and the *control and management of the vessel.* According to his testimony, the officer of the deck was not expected to occupy any *one particular place* on the vessel; but was sometimes on the top of the promenade deck,—sometimes in the pilot house, &c., and, in accordance with this practice, the wheelsman of his watch testifies that he saw him round on the deck attending to his duties."—(570.) Steamers must have "constant and vigilant look-outs, stationed in proper places on the vessel, and they must be actually employed in the performance of the duty to which they are assigned," and from

the nature of their employment must not at the same time have the general control of the vessel, "and for a failure in either of those particulars the vessel and her owners are responsible."

"Look-outs stationed in positions where the view forward, or on the side to which they are assigned is obstructed, either by the lights, rigging, or spars of the vessel, do not constitute a compliance with the requirement of the law; and in general, *elevated* positions, such as the hurricane deck, are not so favorable situations as those selected on the forward deck, nearer the stem. Persons stationed on the forward deck are less likely to overlook small vessels, deeply laden, and more readily ascertain their exact course and movement. * * Apply these principles to the present case, and it is obvious that the officer in charge of the Atlantic was not a sufficient look-out. He stood the watch of the master, who was below, and, as the officer of the watch, he had the charge of the deck and the *control and management of the vessel*, and in the midst of his varied duties it is scarcely possible that he *could give his undivided* attention to the special duty required of look-outs."—(570–1.)

The Steamer Louisiana vs. Fisher, 21 How., 1. A schooner having no light was run down by a steamer. The defence was that the schooner had no light, and was not seen in time. The captain of the steamer says he first saw a black object, and could not tell whether it was a vessel under way, or at anchor.—(p. 5.)

On this the court say—

"Notwithstanding the uncertainty in the mind of this officer, the vessel under his command continued on with unabated speed. No order was given to arrest her progress till a collision with the schooner had became inevitable. This was a grave error and it was followed by disastrous consequences, for which the owners must render indemnity. If the order to ease the engines, or to stop had been given in the first instance, the probability is that the catastrophy would have been avoided.

"The decisions of this court have settled that this was the duty of the steamer under such circumstances."

In Nelson vs. Leland, (22 H., 48, 55,) a flat-boat with 366 bales of cotton was sunk at night on the Yazoo river, by a steamer. The court say:

P. 55—"We think in several particulars the flat-boat was in fault. 1st, as to his lights; 2d, as to his oars; 3d, by being on a diagonal instead of a straight line; and adding: "It is easily perceived that from the position of the flat-boat, it was difficult if not impossible to ascend the river by the steamer, without striking the flat-boat in the position it occupied.

"But we think there was also fault in the steamer. In rounding the point, it is admitted the steamer was at least 300 yards below the flat-boat. Seeing the light ahead the *master, in the use of ordinary caution,* should have stopped his boat *at once,* and reversed her wheels, until the locality of the light was clearly ascertained. It is no excuse that he mistook the light for a place of landing. He cannot lessen his responsibility by alleging his mistake. He is bound to make no mistake, for *it is his duty to stop his boat* WHERE HE DOUBTS, until he ascertains the facts. Had this been done the collision could not have occurred. He could have backed his boat until he avoided the flat-boat. In not having done this the steamer was in fault, and the damages must be divided between the two boats."—(p. 55.)

CAPTAIN CONRAD'S VERSION.

Captain Conrad says (p. 112, A. 40): "I was standing on the hurricane roof as far forward as I could get. 41—How long had you been on the hurricane deck? I was on watch; I came on at 6, as we take it from 6 to 12. 42—You had been there since 6, then? *No, sir;* I had been there more or less, up and down. 43—Were you there at the time you made the crossing? Yes. 44—And how long did you continue on the hurricane roof? I stayed there until after this boat was sunk. 45—Who was at the wheel of your boat? Dunlap." He says the

pilot in the wheel-house saw the Katie first, thus (p. 110): A. 22—"We got to the head of Diamond island. The pilot blowed his whistle twice, and I asked him *what he blowed his whistle for;* he said there was something ahead there; he didn't know what it was. * * 26—I looked ahead. I saw something ahead—something black. I could not tell myself what it was. *We went on about a minute*, and the pilot rung his stopping-bell, and, after he rung the stopping-bell, the engineer opened his door, and that kind of *blindfolded* me on the roof, and *I laid down on the deck* and looked forward. I could not perceive whether it was a boat or not. By that she came closer to us, and I saw it was a boat with one chimney. I told him she was coming into us; told him to back her; and, from the movements—from the actions of the boat—the boat had backed—had made some three or four revolutions backward before she struck us."—(p. 111.) 32—"Describe the course of the Des Moines previous to the time when you saw this object; how was she going? She was going up the river pretty close to the Indiana shore. 33—How far do you suppose she was from the shore at the time you first saw the object? Well, she was then coming over towards the Indiana shore, making her crossing; she had nearly crossed over to the Indiana shore. 34—When she had crossed over and taken her position so as to run up, how far was she then from the Indiana shore? Within 40 or 50 yards. 35—And what was her course from that time until the moment of the collision? Well, she kept straight in the river; she never took neither side; *she just kept* on her course straight up. 36—You say she blew two whistles? Yes. 37—What did that indicate? To the larboard. 38—Which shore was that? The Indiana. 39—Now describe the position of the other boat in the river the first time you saw her. Well, the other boat was coming down, showing a pretty good piece out into the river, and then she run like she was going to run on the inside of us; * * she

pointed that way, laid her course in that way, until she came pretty close to us. Then she changed her course." (pp. 111, 112.) 56—"Describe her course, how she altered and came around. A.—She came down. When she got within about 50 yards of us she changed her course and went straight out, quartering out as if she was agoing to make a landing towards Diamond island. That was the way she came when she struck us quartering. 57—Where was your boat at that time? We were laying waiting to see what they were agoing to do."—(p. 113.) 62—"Describe how the Indiana shore runs there. I am not acquainted with the shore there. 63—Don't you know how it curves—how it turns? No, sir; there was a point right above where she struck us—*looks like a point.* I am not acquainted with the river."

The Des Moines was in fault here, 1st, by violation of the statute in having no look-out whatever. The captain says it was his watch, and evidently was unaware that the boat should have any look-out to assist the pilot. He had been "up and down" during his watch.—(p. 112, A. 42.)

He happened to be on the forward part of the hurricane roof when the "pilot sounded the whistle twice," but he was not engaged in looking out, for he asks the pilot "what he blowed his whistle for," and then he took no precautions. He then, according to the rules stated in Chamberlain vs. Ward, should have gone as far forward as possible on the lower deck to ascertain the situation; but he did absolutely nothing, and remained where he could not see; did not even give any order to stop; and let the boat run on "about a minute," when "the pilot rung his stopping bell." Then it became evident how important it was to have a look-out far forward and below, for when the "engineer opened his door" there was a blaze of light, which the captain says "kind of blindfolded" him, and likewise the pilot. The captain then

laid down on the deck to get nearer the level of the water, but still "could not perceive whether it was a boat or not." His boat was still moving ahead. He had given no order to back her. "By that time *she* came closer to us (this object) and I saw it was a boat with one chimney." Then, for the first, does he order his boat stopped. Her wheels had been still, and not backing until then, as he says, "I told him she was coming into us, told him to back her."

Prior to this movement the captain had not given an order, nor attempted to do any act to avoid the collision.

In St. John vs. Paine, 10 How., at 585, the court say: "We are satisfied that the steamboat was in fault in not keeping at the time a proper look-out on the forward part of the deck. * A competent and vigilant look-out stationed at the forward part of the vessel, and in a position best adapted to descry vessels approaching, at the earliest moment, is indispensable to exempt the steamboat from blame in case of accident in the night time." In the Genesee Chief, 12 H., at 462, the court say: "By a proper look-out we mean * some one in a favorable position to see, * *exclusively* employed in watching the movements of vessels which they are meeting or about to pass."

In Steamboat New York vs. Rea, 18 H., at 225, the court say: "The steamboat was also in fault in not hava look-out, at the time properly stationed. The captain admits that no person was stationed on the deck as a look-out. He claims to have been on that duty himself, although he stood upon the upper deck, some fifteen feet above the water, and was at the time engaged in giving directions for the management of her," and, therefore, she was held in fault.

In the case of the *Atlantic* the court held her in fault "because the officer in charge of her deck did not exercise proper vigilance to ascertain the character of the approaching vessel after he discovered the white lights."

The Katie, like the propeller Ogdensburgh, though in fault in not having her lights properly stationed, yet had two lights brightly burning, and was actually visible from the Des Moines long before the time when the captain saw her; and it is palpable that it was his inattention that led to his not seeing her much sooner.

The pilot, Dunlap, says he saw her "above the point of the Indiana shore."—(p. 137, x-ints. 26 and 27.) 30 X—"How long was it from the time you first saw her till the boats came together? Well, it was some considerable time. I could not say just how many minutes it was. 31st—What speed was the Des Moines running at that time? She was going up the river I suppose 8 or 9 miles an hour; she was doing pretty good running."—(p. 136.) X 24th—"You say you saw the Katie *when you left the island* to take the Indiana shore but did not whistle till you got to the Indiana shore? I did not whistle till I crossed over."

On p. 132 refers to the map (at p. 131) and says: Q. 85—"Describe on the map where you were when you first saw the object in the river? As I stated before I saw it *when I was ready to cross* over here from the island bar at the point marked O. (See this point below the centre angle of the island on plat, p. 131.) 77th—"Describe on the map where you were when you straightened up in the Indiana shore? A.—About the point marked F."

80—"I want you to describe about where it was on that map that you blew your whistle? Well, I was along the *island shore.* I had a better chance there to see the boat up there. I saw her before I got under the point below West Franklin, and blowed plenty in time. 81—Where did you blow your whistle? I crossed over there and blowed the whistle. 82—Here, at the point marked F? Yes. 84—How far below West Franklin when you straightened up the shore? Well, half a mile or three-quarters of a mile." The Katie was above the point, and this makes her three-quarters of a mile from F, and the

Des Moines ran from O to F, at least one-quarter of a mile; this makes the boats a mile apart when the pilot, Dunlap, saw the Katie, while the captain, acting as look-out, did not see her until afterwards.

Singer, clerk of Des Moines, 105, saw the Katie before she rounded the point. "I was watching this object from the time I went on the roof." "We stooped down on the roof and looked at her to try and see what it was. I saw her first, *at least half a mile off.*" "We were full half a mile off when the Des Moines blew her whistle twice." "When the Des Moines rang the bells to stop we were full 400 yards off. She rang the bell to stop about two minutes after she blew the whistle."

There is ample proof by the libellants that the Katie's lights were shown, and ought to have been visible.—(See Mellen, the pilot, p. 44, int. 45. Merriman, the engineer, p. 61. Frederick, the carpenter, p. 69.) McConnell, captain, (p. 36, cross-int. 129, 131,) says he looked at them not more than half hour before the collision. Tomlinson, passenger, (80), and several other witnesses for libellants.

The circuit court finds her in fault for having her lights in the wrong place—thus: "Her signal lights were hung on each side on nails driven into the nosing of the hurricane roof. This was an improper place for carrying signal lights. When the Katie was built she had a crane attached to her chimney to carry signal lights, but, one of the horns of the crane being broken off, she afterwards carried her lights as stated. The rules of navigation require signal lights to be so arranged as to show a uniform and unbroken light." She was found to be in fault, also, for want of a proper look-out.—(Hazlett vs. Conrad, 1 Dillon, 83.)

SECOND. The circuit court found the Des Moines also in fault for not having on board a licensed pilot, as required by act of Congress of August 30, 1852, (sec. 9,

div. 10, 10 Statutes, 67,) the proviso to which says, "That if a vessel leaves her port with a complement of engineers and pilots and on her voyage is deprived of their services or the services of any of them, without the consent, fault, or collusion of the master, owner, or any one interested in the vessel, the deficiency may be temporarily supplied until others, licensed, can be obtained."

It is contended that the above proviso covers the case of the Des Moines. To comply with that the vessel must have left her port with a complement of pilots, and on her voyage be deprived of them. The Des Moines had as many pilots at the time of the collision as she started with, and, consequently, was deprived of the services of none; and, therefore, her case is not within the proviso. Her fault is in starting without a single pilot. Wherever a fault is shown the presumption is that it contributed to the loss, and the burden of proof is against such vessel.—(Lowndes on Coll., 88, *et seq.*)

In case of Steamer Oregon vs. Rocca, 18 How., 570, where there was direct conflict of testimony, each vessel insisting that the other ran into her by changing her course, the court say: "In such conflict of testimony, where the vessels were both steamers or sailing vessels, and there were no leading facts for discrimination, fault would be chargeable to both vessels."

In The Nautilus, Ware Rep., 514, 533, the court say: "On a consideration of all the evidence, I am not satisfied that the faults were wholly on one side, and when this is the fact, the conclusion, as I understand the law, is that the loss shall be divided between the parties."

THIRD. It is said that the circumstances of the case suspend this statute as concerns the voyage undertaken, namely, from Nashville to Louisville, and because, under pressure of military necessity, she started on said voyage without a Louisville pilot, she should not be held responsible at all. But Congress did not change the law

applicable to this case during the war,—did not expose vessels carrying troops to such extra perils as running in unseaworthy condition. The argument of the appellant would relieve the vessel from all responsibility for whatever damage she might commit, when running without pilot, engineer, and other officers.—(See Lowndes on Collisions at Sea, 70, citing The *Rose*, 2 W. Rob., 3, and The *Vivid*, Swab., 139. Rogers vs. St. *St. Charles*, 19 How., 112, where carrying the mail held no justification for too much speed.

FOURTH. But there was no coercion applied to the captain. Singer the clerk says, the boat "was chartered by the quartermaster to run from Cairo to Nashville."—(p. 104.) "No contract was made with the quartermaster at Nashville for carrying these troops," and he gives the reason—"she was chartered by the government for the whole season. At the intermediate points we were subject to the orders of the quartermaster. The charter was made by me for the boat; I was clerk."—(p. 106.) In this he contradicts Conrad, the captain, who says: Q.—"You were then regularly in the government service? Yes. Q.—Under a contract? A.—No. *We were pressed in.* Where? *At Cairo.*"—(p. 119, X. 12 to 14.)

FIFTH. The leading witnesses of the Des Moines, who were on the hurricane roof, the captain, pilot, and clerk, give accounts so contradictory to each other, and to the answer, that their testimony should be treated as wholly unreliable, not only as to the action of their own boat, but also as to that of the Katie.

1st. Captain Conrad says "the other boat was coming down, *showing a pretty good piece out in the river.*"—(p. 111, A. 39.) Then she turned and ran in, and then again turned, and ran out.—(p. 111, A. 39, p. 112, A. 55, 56, p. 116, A. 115.) "I found we were *right against the shore;* that was *immediately* after she struck us."—(p. 113, A. 67.)

The *answer* says she was coming down "about 100 or 125 yards from that (the Indiana) shore."—(p. 6, line 13th.)

2d. The pilot, Dunlap's, theory is that the Katie never changed her direction or position, and that she was running all the time within 50 yards from the shore, "heading with her wheel towards the bank and quartering out." (p. 134, A. 116 to 120 and 106.) "I don't think she went out from the shore any *from the time I saw her.*"—(p. 138, A. 40.) "I could not tell at that distance, *and in the night*, about how close she was to the shore."—(A. 44.)

3d. Singer, the clerk, gives a still different account; says (p. 105) "the Katie was, apparently, pretty close to the Indiana shore *until she came around the point*," (Id.,) then "*she started out.*"—(Id.) "From the time I saw her she was pretty close to the bank."—(Id.) (211.)

This witness differs from Dunlop in stating that she started out, and in that way ran into the Des Moines; and he contradicts Conrad, in saying that when the Des Moines had backed her full distance from the Katie, at the time "when they stopped her and came ahead on her," (she was as much as) "75 or a 100 feet" from the shore. Thus,—

"When we were turned across the river, the stern of the Des Moines was pretty close to the bank; not more than 75 or 100 feet; when they stopped her and came ahead on her."—(p. 105.)

The leading feature in Conrad's account is that the Katie ran from out in the current close in shore, then straight down until within 50 yards of the Des Moines, and then out again, in these words: "Well, the other boat was coming down, showing a pretty good piece out in the river, and then she run like she was agoing to run on the inside of us, run to Indiana shore. She pinted in that way; laid her course in that way until she came pretty close up to us. Then she changed her course."—(111, A. 39.) Dunlap contradicts him by saying that the

Katie never did run out at all, and every other witness in the case contradicts him. But the answer gave the Katie's position as from 100 to 125 yards out, and Conrad felt the difficulty resulting from that.

Next. The leading feature in Dunlop's account is that the Katie hugged the shore all the time and that her head all the time was pointing out, "with her wheel towards the bank and quartering out."—(p. 134, A. 116.) "That is the way she hit us."—(A. 118.) "I never saw a down stream boat crab around a point like she did."—(A. 106.) She came into the Des Moines by floating down upon her. The answer says that the "pilot on watch saw something in the river about half a mile distant, which he supposed was a steamboat coming down, about 100 or 125 yards from the shore, * * and when she came within a short distance of the Des Moines *she turned* her bow nearly across the channel," &c.—(p. 6.)

The trouble in Dunlop's mind was, that the Katie, within 50 feet of the shore did not have room to move *across* the river, as that would have carried her further than 50 yards from the shore; therefore he had to let her float directly down on the stem of the Des Moines. How she could have done this, with her wheel pushing her ahead, he does not explain. Captain Conrad cannot insist that Dunlop's account is untrue, for the answer says the pilot saw her half a mile distant, and Conrad in his testimony says he did not know that a boat was coming until the pilot whistled. He did not know what it was until he gave the orders to back her, (p. 110, A. 26,) and all the witnesses say she had made only 3 or 4 revolutions back when the crash came. Now, as this is all Conrad knew, then how could he know that the Katie ran in and down and out, as he swears, especially as not another witness says so? Mr. Wills' brief, p. 32, says "the Katie struck the Des Moines as she came round the corner of the point." This is a fourth theory, differing from Conrad, Dunlop, and all the witnesses. Dunlop says the collision was at "E" on plat

at page 131.—(A. 73, p. 130.) He also says that when he got near enough up to the point, he intended crossing the river, viz: "I would have run that point up until it opened, and then crossed over to the right bend.—(p. 135, A. 121.)

SIXTH. The evidence shows that the Des Moines was handled unskillfully and recklessly.

Taking up, now, the Des Moines' conduct, as stated by her pilot—he saw the Katie rounding the point and running down the Indiana side, and he crossed the river, as shown by the line in plat at 131, directly in front of her, giving no signal until he got close to her; then he signaled; and that was the first notice the Katie had that she was to cross the river; she started immediately to do so, so say her witnesses.—(Mellen, 42, A. 13.) Wolfendale, the mate, says "the pilot drew the wheel to the larboard to get out of the way."—(p. 63.) (125.)—It was her duty, then, not to stop, but to get out of the way, if possible. Both sides agree that it was just at this time that the Katie changed her direction and started across the river; and the pretence of the appellant is that doing so ran the Katie into the Des Moines within 50 yards of the shore!! Dunlop says the Katie was immediately in front of him, and a quarter of a mile off, (p. 127, A. 13,) when he signaled her, and the boats approaching each other at the rate of 22 miles an hour. He had known all along that he would run close to the shore; up to that moment the Katie was in ignorance of it. He signaled her to give the Des Moines the inside, and the Katie immediately obeyed. Mr. Wills' brief, bottom of page 38, says of Dunlop: "He then crossed over from the island shore, * *where he made his election*, and sounded his signals, announcing his intention to run the shore." The Katie was right, up to that moment, and the change (if any) made by her was under the obligation to run the course indicated by the Des Moines' signal. (Mellen, the pilot, says "he blowed for the channel side, and I

pulled round the bar as soon as I could to give him all the room he wanted."—p. 50, A. 54. See also Wolfendale, *infra*, eighth point, 9.) There was no duty on her to manœuvre. There was ample room inside to admit of turning the Des Moines to her larboard; that would have cleared the Katie. As the ascending boat it was her duty to do the manœuvring to keep out of the way.

The Georgia, Newbury Reports, 476, says:

"The duty of doing the manœuvring, as usual, devolved upon the ascending boat."—(Ib., 477.)

"It must be remembered that the *ascending* boat is always required to do the manœuvring."—(Ib., 479.)

The ascending boat has double advantage over the descending. If in still water they would be upon an equal footing; but the ascending boat has in the way of steerage the power to turn further aside, in consequence of the resistance of the current, in going a given distance ahead; while with the descending boat, the effect of the current reduces such power in her, in passing over a given distance.—(See Lowndes on Coll., 57.)

SEVENTH. I have endeavored to show the Des Moines in fault, adopting her own theory that she was about fifty yards from the shore. The position of the Des Moines at the time of the collision, as stated in the answer, was more than double the distance stated by her leading witnesses.

But I maintain that the proof shows that the Des Moines, when the vessels were approaching, sheared to the starboard, and at the time of the collision was not where she ought to have been, according to her own signals. It is evident that she ran into the Katie.—(See Mr. Broadhead's brief, p. 10–13.)

LEADING POINTS OF TESTIMONY.

EIGHTH.—1. The Katie sank in five minutes.—(p. 26, A. 33–4.)

2. Katie's position when struck.

Captain McConnell says she was "well out in the river, from one-third to one-half" way out.—(p. 27, A. 58.) Mellen says middle of river.—(p. 42, int. 18; p. 46, A. 88; p. 50, A. 42, 50.)

Merriman, engineer, says, plenty of room between the Katie and the shore.—(p. 61.)

Wolfendale, mate, (p. 63,) in middle of river.

Tomlinson, a passenger, the same.—(p. 80.) Also Shelby, a passenger.—(p. 74.)

Damron, pilot—(p. 90, A. 15)—two hundred yards.

Singer, clerk of Des Moines—"She was below the point in the bend *when she* STARTED OUT."—(p. 105, fol. 210–211.)

Conrad says she started out after she was signaled.

3. Des Moines struck Katie at right-angles.—(McConnell, p. 32, A. 65. Mellen, p. 44, A. 39 and 54. Merriman, engineer, p. 62.)

The Katie, at moment of collision, in such position across the course of the Des Moines, as to appear from the Des Moines, that she was coming down sideways upon the latter.

T. Crowley, deck hand on Des Moines.—(p. 150.) 14—"Describe how the other boat came? A.—Appeared to me she came kind of sideways into us. 15th—How was she going when you came together? A.—Down stream."

Manly, Cairo pilot on Des Moines.—(p. 142.) 46—"What was the position of the Katie when you first saw her coming down? A.—She looked to me as she was kind of quartering towards Kentucky shore, coming towards us." The Katie was from 50 to 60 feet off when I saw her."—(p. 143, A. 4.)

Imhoff, passenger on the Des Moines.—(p. 157, fol. 292.) "When I came upon deck *I saw another boat coming right down upon us.* I saw no lights on her except lights from her *cabin windows.*"

Dunlop, the pilot.—(p. 134, A. 115, 120; p. 138, A. 40.)

4. Des Moines sheared and ran into Katie.—(Mellen, p.

42, int. 15; p. 44, A. 54; p. 46, A. 86; p. 48, A. 22; p. 51, A. 58. Wolfendale, mate, p. 63–4. Frederick, carpenter, 70, 72. Shelby, a passenger, 73.)

5. And was going ahead.—(p. 52, A. 71–4.)

6. The boats together a minute and a half.—(McConnell, p. 33, 68 to 70 x-int. Frederick, carpenter, p. 71.)

7. The Des Moines backed off from 100 to 150 yards.—(McConnell, p. 33, 74 x-int.; p. 39, 203 x-ex. Merriman, engineer, p. 60; Mellen, p. 43, A. 46; Wolfendale, p. 64, fol. 126.)

8. Mellen says, (p. 50, int. 55, 56, and p. 51, A. 60–63,) if Des Moines had backed her larboard wheel she would have missed striking; and (54th) that "he blowed for the *channel* side and I pulled round the bar as soon as I could to give him all the room he wanted."

Mellen asked, after the Des Moines changed her course, if the Katie could have avoided her.—(p. 44, Q. 54,) "No, sir; it was done so quick we had no time to back out of the way. It took some time to check her headway, going down with a current like that. If the Des Moines had backed her *larboard* wheel they could have kept from running into us, I think."

9. The Katie trying to get away from the Des Moines. (McConnell, p. 39, X. 192–196.)

The mate, Wolfendale, says: "The pilot of the Katie drew the wheel to the larboard to get out of the way. Just as I was leaving the pilot-house I saw him giving her the wheel hard to the island."—(p. 63.) "He was turning her as fast as he could when she struck him."—(p. 65.)

10. She answered and obeyed Des Moines' signal.—(Mellen, p. 42, A. 13.)

11. Mellen, pilot of the Katie, had been licensed 12 years.—(p. 41, A. 42.) Was well acquainted with that part of the river.—(A. 35.)

Had not been drinking.—(A. 57 to 61; 184 to 191 x-int.; p. 34, x-int. 105 to 116; p. 92, A. 6.) "There was not a man drunk aboard the boat."—(p. 58, A. 189.)

Jumped from the Katie when she sunk.—(A. 57 and 103, p. 32, 62 and 63 x-int.) He and the captain jumped eight feet to the other boat. Until that time held on to the wheel.—(153 x-int., p. 25, 12 int.)

Captain McConnell speaks well of him as a pilot.—(26, int. 42.) And says he was sober.—(p. 34, Ans. 103 to 110 and 116.)

Damron, the other pilot, asked if Mellen was sober, says: "He appeared to be perfectly sober when he came on watch."—(p. 92, Ans. 6.) Also, Frederick, the carpenter.—(p. 71.)

Mr. Wills' brief (pp. 6, 7) cites three witnesses on the Katie to show that Mellen was intoxicated, namely: Mellen himself, Capt. McConnell, and Damron, the other pilot, but each of these witnesses says he was sober. The three witnesses cited by Mr. Wills on the Des Moines are 1st, the captain, who says "he was dead drunk," (p. 114, Ans. 85 and 80,) although Singer, the clerk, says he talked with him as he changed his clothes. 2d. Singer's only testimony that Mellen was intoxicated is in the sweeping expression: "The captain was the only one on the Katie that I considered sober."—(p. 106, fol. 212.) The 3d witness is Dunlop, the pilot, who did not talk to Mellen, and does not say that he thinks he was intoxicated.—(p. 135. A. 122, 128.)

12. Des Moines' engine not stopped in time for her headway to have run out.

John Gillan, assistant engineer on Des Moines.—(p. 145.) 2d.—"After the bell rang to stop what was done? The engines were stopped right away. 3d.—And what next? Then they rung to back. Then the engines were backed. 4th.—What occurred next? Then the boats came together next. 20th.—How long was it before the collision that your boat commenced backing? A.—Three or four backward revolutions.—(146.) 22d.—What was your boat actually doing in *respect to her motion?* A.—Her engines were backing. I could not say what the

boat was doing. A. 26.—I think when she struck her headway was run out."

Manly (p. 143, A. 10) thinks the headway "was run out."

Imhoff, a passenger on Des Moines, says, (157,) "I know we were not going very fast when we struck, if we were going at all."—(fol. 293.)

13. The position of the Des Moines such that, before the boats parted, "she was turned square across the river." Manly (143, 11) says so.

Dunlop.—(126.) The Katie "struck me on the larboard bow and knocked me round in the river with the stern towards the Indiana shore, and she kept on her course towards the island. She did not stop her headway. That threw us in the same position she was."—(p. 127.) A. 17.—"Whirled us right round." A. 21.—"I was right straight in the river." This would give the Katie a zig-zag movement—first across the river, until she touched the stem of the Des Moines, then suddenly, and with such momentum and velocity as to break in her own hull, directly down the river from 10 to 20 feet or more, and next the first course across the river was resumed.

BURDEN OF PROOF.

In the Grace Girdler, 7 Wall., 203, the court say:

"Where fault is shown on the part of the damaging vessel, it is incumbent on her to show that such fault had in no degree the relation of cause and effect to the accident."

The court also say:

"There is another feature of the case before us, to which it is proper to refer"—and then state that the district and circuit court both coincided: in such case "this court ought not to reverse upon a mere difference of opinion as to the weight and effect of conflicting testimony. To warrant a reversal it must be clear that the lower courts have committed an error, and that a wrong has been done to the appellant."

F. A. DICK,
Of Counsel for Appellees.

FEBRUARY, 1872.

IN THE

Supreme Court of the United States.

PETER CONRAD, *Appellant*,

vs.

HIRAM K. HAZLETT AND ADAM WEAVER, *Appellees.*

} IN ADMIRALTY.

Appeal from the Circuit Court of the United States: District of Missouri.

and near the head of Diamond Island, she came in sight of the "Des Moines," then distant from a quarter to a half mile from her, and ascending the Ohio river near the right or Indiana shore; that about the time the two vessels came in sight of each other the steamer "Des Moines" gave two sounds of her whistle; that at that time the "Katie" was descending the Ohio river and near the middle of the stream; that the "Katie" immediately answered the signal of the "Des Moines" by giving two sounds of her whistle, and continued down stream, bearing toward the Kentucky or left shore of the Ohio river; that a few moments thereafter the steamer Des Moines suddenly turned her course toward the Kentucky shore, in the direction of the Katie, and before a collision could possibly be avoided by the "Katie," struck the "Katie" on her starboard bow, cutting into her almost to her capstan, which caused her rapidly to take water, by reason whereof she sank and became a total loss.

The libellants claimed damages in the sum of $40,000, the alleged value of the steamer "Katie."

The answer denied all the material allegations of the libel.

Upon trial before the District Court both vessels were adjudged to be in fault, and it was ordered that the damages be apportioned between the owners of the two boats, the libellants and respondent, and that each party be adjudged to pay half the costs. Thereupon a reference was made to a commissioner to ascertain and report the damages.

The Commissioner found that the "Katie" was a total loss, and that the damage done to her by the collision was $20,670, and that the damage done to the "Des Moines" was $597; and after striking a balance, the amount of damages chargeable to the "Des Moines" and owners in favor of the libellants was the sum of $10,036.50, and reported accordingly. Exceptions were taken to the report by the respondent, but the exceptions were

overruled and judgment rendered by the District Court in favor of libellants for the amount of $10,036.[illegible]0, and for one-half the costs. From this decree of the Court an appeal was taken to the United States Circuit Court for the Districts of Missouri.

On the 12th day of April, 1870, upon a final hearing before the Circuit Court, the decree of the District Court was in all things affirmed, and the case is brought by the respondent, Peter Conrad, to this Court, by appeal.

I. The Circuit Court, from which this appeal is taken, having found the fault to be mutual, and the libellants not having appealed from that judgment, it will only be necessary in their behalf to show that the steamer "Des Moines" was in fault, and not that the Katie was free from fault.

"The neglect of one vessel to show proper signal lights does not absolve the other from the necessity of observing the usual laws of navigation, or such reasonable and practicable precautions generally as the circumstances allow."

The Grey Eagle, 9 Wallace, 505.

It was contended by the respondent, and all the officers of the "Des Moines" swear, that the "Katie" had no signal lights out immediately before and at the time of the collision, and that they did not know what the "Katie" was—whether a steamboat or not—until immediately before the collision; but this is no excuse for misconduct on the part of the "Des Moines."

"Where a steamer approaches an object at night, and the master is uncertain what it is, he should slacken his speed; otherwise his vessel will be liable in case of collision."

The Louisiana vs. Fisher, 21st Howard, p. 1.
Nelson vs. Leland, 22d Howard, p. 48.

This the pilot of the "Des Moines" did not do until it was too late. It will be perceived from the diagrams at-

tached to the record in this case, that when the "Des Moines," in ascending the Ohio river, reached the foot of Diamond Island, her course was across the river, from the island to the Indiana shore; that she saw the "Katie" before she crossed over, but did not sound her whistle till she crossed over.

See Dunlap's testimony, p. 136, X In: 24, in his examination in chief, he says "I could not tell whether it was a steamboat or what it was."—p. 127, In: 15.

The master and owner of the "Des Moines," Conrad, did not see the "Katie" till the pilot had signaled, so he says; then he looked ahead and saw something black; "could not tell what it was; we went on about a minute, and then the pilot rang his stopping bell." But Singer, the clerk, says he was forward on the roof of the boat with Captain Conrad, standing at the bell, and he says he saw the "Katie" first at least half a mile off, like a black spot, and he and the Captain stooped down on the roof to see what it was.

See p. 105.
See p. 110, In: 26th.

One minute after the signal, was just as they were coming into collision, as all the testimony shows, and just about the time they would have been brought in collision, according to the testimony of the pilot, Dunlap himself, for he says the "Katie" was a quarter of a mile off when he first saw her. (See p. 135, X In: 8). This was before he sounded his whistle. The testimony shows that the "Katie" was coming down at the rate of ten miles per hour, and the "Des Moines" ascending at the rate of eight miles per hour, and this rate of speed would have brought the two boats together in less than a minute.

The case of Nelson vs. Leland, 22 Howard, was a case of collision between a steamboat and a flatboat. The flatboat was held to be in the fault, because it had no steady or fixed light; the steamboat, because seeing the flatboat

ahead, he did not stop his boat and reverse his wheels until he could ascertain what it was. "It is the duty of the master, says the Court, to stop his boat where he doubts until he can ascertain the facts. Had this been done the collision would not have occurred."

There was abundant evidence in this case that the "Katie" had her head lights out, and that they could have been seen by the officers of the "Des Moines" if they had been attentive to their duty; but it does not appear that the "Des Moines" had any "look-out" on her part at all; and the master, Conrad, who was on the watch did not see the "Katie" until the pilot signaled, and then waited a minute before she stopped.

G. Mellon, pilot of the "Katie" says "our boat had regular signal lights, blue and red." P. 44, In: 45.

Wm. Merriman, engineer of the "Katie," says "there were two signal lights on the "Katie," a red one and a blue one; they were in their proper place." P. 61 of the record.

Henry Frederick, carpenter, says the same thing. P. 70.

John J. Tomlinson, a passenger on the "Katie," says the same thing—the "Katie" had two signal lights out that night.

See p. 80.

Several other witnesses on the part of the libellants testify to the same fact.

The officers of the "Des Moines" were then in fault in not stopping their boat in time. The pilot, Dunlap, says: "I saw her in plenty of time." P. 135, X In: 8.

II. The master of the "Des Moines," who is the respondent in this case, and was the owner of the boat, was in fault in having an unlicensed pilot at the wheel at the time of the collision. There can be no excuse for this neglect. The act of Congress in relation to steamboats navigating the Western waters are imperative on the subject.

See 10th Sub: of Sec. 9, Act of Aug. 30, 1852.
1 Brightly's Dig, p. 854.

Robert Dunlap, the pilot of the "Des Moines," says *I never had a license on the Ohio river prior to this accident.*

See p. 135, X In: 6.

III. The officers of the "Des Moines" were in the fault in not observing their own signal for the larboard. She was going up stream. The Indiana shore was on her larboard. The "Katie" was coming down, and the Kentucky shore or Diamond Island was on her larboard. The collision occurred near the head of Diamond Island. The "Des Moines" had followed the usual course of up stream boats, and, following the course of the channel, had crossed over from the foot of Diamond Island toward the Indiana shore. This of itself was an indication to the "Katie" that this would be the course of the "Des Moines," and, according to the well settled rules of navigation, the ascending boat has the choice of position in the river. This is what the pilot of the "Des Moines" means when he says: "I, being an up steamboat, had the preference to blow the whistle."

P. 138, X In: 43.

And not only has the ascending boat the choice of the river, but it is her duty, according to the Pilots' Rules in force, to signal to the descending boat what her wishes are in this respect, by giving one whistle for the starboard, or two whistles for the larboard. About this rule there is no controversy.

Ques. What did you say your two whistles indicated? Ans. To the larboard.

Ques. That is, that you intended to keep along the Indiana shore? Ans. Yes, sir.

See Conrad's dep., p. 121, X In: 62 and 63.

But, instead of keeping along the Indiana shore, as she had indicated she would by her signals, she turned

almost at right angles across the river, and struck the "Katie" on her starboard, and ran into her to her capstan. See the testimony of Gustavus Mellon, pilot of the "Katie," p. 42, In: 13. And this is the testimony of all the officers of the "Katie" who saw anything of the collision, and also of the passengers on that boat.

Clark M. Shelby, a passenger on the "Katie," a citizen of Kentucky, who has travelled on steamboats on the Western waters for thirty years, says "he heard the two whistles of the "Katie," went out to see what was the matter, saw a large boat coming toward the "Katie" from the Indiana shore, nearly at right angles toward the "Katie," and she struck the "Katie" abaft the bow on the starboard side.

See pp. 73 and 74 of Record.

Of course, on this point there is a conflict of testimony between the officers and crew of the two boats, those on board the "Des Moines" maintaining that she kept close to the Indiana shore, and whilst close to the shore the "Katie" "*ran into her.*"

There is a conflict between the same witnesses as to whereabout in the river the collision took place, whether close to the Indiana shore, or near the middle of the river.

There is a conflict also as to whether the "Katie" answered the signal of the "Des Moines," all the officers of the "Des Moines" swearing that they heard no answer, and all the officers as well as passengers, without exception, swearing that the "Katie" gave two distinct whistles in answer to the signal of the "Des Moines."

See Henry Frederick, carpenter, p. 70.
See Clark M. Shelby, passenger, p. 73.
See John J. Tomlinson, passenger, p. 80.
See Thos. E. Blake, passenger, p. 81.
See Wm. Merriman, engineer, p. 62.
See Wm. Wolfendale, mate, p. 63.

The best evidence of the location of the boats in the river at the time of the collision, is from a passenger, Clark M. Shelby, above referred to. He says that "when the 'Katie' was struck she was near the middle of the river. The reason I say so is because I looked out to see which was the nearest shore to get to for safety;" and he saw the boats come together. The witnesses who speak on the subject all testify that the river at this point was from five to six hundred yards wide.

This corresponds with the theory of the libellants and the testimony of their witnesses.

But the physical facts of the case, testified to by witnesses on both sides, and about which there is no conflict, establish the proposition that the "Des Moines" at the time of the collision had turned to the *starboard*, instead of keeping to the larboard, as she had signified by her whistle that she would; and that the "Katie" was at the time obeying the signal given by the "Des Moines;" and this is proven by the fact that the wound received by the "Katie" was on her *starboard* side, and the wound received by the "Des Moines" was on her *larboard* side. If, as is claimed for the "Des Moines," she had gone to the larboard until she got close to the Indiana shore, and then as her pilot says he kept her "*straight in the river*" and while in that position the "Katie" came down on to her; this could not have happened, for if the "Katie" struck her on the larboard, the larboard side of both boats would have been injured, and if on her starboard, then the starboard side of both boats would have been injured; but if both boats were heading toward the Kentucky shore, the one coming down, and the other going up, and a collision ensued, it would have brought the starboard of the one in contact with the larboard of the other; and that is just exactly what happened in this case, as is established beyond controversy by the witnesses on both sides, and the inevitable conclusion is, that the "Des Moines" was in fault, because she violated her own signals.

The pilot of the "Des Moines" says, that at the time of the collision the "Des Moines" was pointing straight in the river, and the "Katie" quarting towards the island. That is impossible; the proper place of the "Des Moines" was *straight* in the river after she got to the Indiana shore, but she was not in that position at the time of the collision.

This same witness says, the "Katie" struck us on the *larboard*, knocked off the stem band, and some of her outriggers ran into the "Des Moines" abaft the stem. p. 134, In: 110.

Henry Hicks, a witness for respondent, says the "Des Moines" was injured on the bow on the starboard side; there was a hole knocked into her two or three feet above the water line on her larboard bow.

"Ques. Did you notice the starboard side? Ans. Yes.

"Ques. Could you see any injury? Ans. No, sir."

See p. 158, 159.

John Hoback, mate of the "Des Moines," says she was struck on the "larboard bow."

P. 154, In: 25.

Timothy Crowly, for respondent, says the "Katie" struck us "a little abaft the stem, on the larboard side."

John Gillan, engineer on the "Des Moines," says, the "Katie" came into us on the larboard side; I saw the break after the collision, there was no break on the starboard, p. 145, In: 14, 15, 16, 17; and so says the carpenter who did the repairs, and so they all say, that the injury to the "Des Moines" was on the larboard.

The witnesses for the libellants all say that at the time of the collision the "Katie" was pointing toward the Kentucky shore to the larboard. She was obeying the signal given by the "Des Moines."

John Marnly, a pilot, and witness for respondent, says the "Katie" was pointing toward the Kentucky shore.

But this is proven conclusively by the nature of her injuries, she was struck on the starboard.

Henry Frederick, the carpenter, says, the "Des Moines" struck the "Katie" 25 feet from the stem, on the right or starboard side; it cut a hole into her side, p. 69.

Clark M. Shelby, a passenger, says the "Des Moines" struck the "Katie" abaft the bow on the starboard side, p. 73.

John Biggs, a ship carpenter, who went to raise the wreck of the "Katie," but could not, examined the hull of the boat, found her cut into the capstan on her starboard side, p. 76; see diagram prepared by him at p. 76 of the record.

Gustavus Mellon, the pilot of the "Katie," says the "Des Moines" struck us on the starboard side just abaft of the capstan, p. 42, In: 13.

And so they all say. There is no conflict among the witnesses in regard to the fact that the starboard of the "Katie" and the larboard of the "Des Moines" came together at the time of the collision, and this fact puts the fault on the "Des Moines."

It is contended that proper efforts were not made to raise the "Katie," and that a portion of the wreck was saved which ought to be accounted for.

Edward Leezer, a wrecker, says a week after she was sunk he went there with a bell boat to raise her, under a contract with the owners; but could not raise her; that he got out a part of the wreck, but it did not pay one-tenth of the cost of taking it out, p. 188, In: 15.

John Biggs also tried to raise the wreck, but could not.

It is also claimed that certain insurance was paid on the "Katie" after her loss, and that this amount should be deducted from the damages.

But this Court has held, that "it is no defense to an action for collision that the libellants have been paid for a total loss by the Underwriters."

See Monticello vs. Mollison, 17 Howard, p. 152.
See also Yates vs. White, 4 Bing. N. C. 272.

Wherefore libellants ask for judgment as in the Court below.

JAS. O. BROADHEAD,

Proctor for Libellants.

Erie R.R.

M. & E. R.R.

HOBOKEN.

Jas. Watt.

Cayuga.

Canal Street.

Desbrosses Street.

238' South of Desbrosses Str.

Hubert St. 720' 478' do

North Moore St. 1295' 985' do

Chamber St. 2428' 1965' do

Harrison St. 3179' 2705' do

Barclay St. 3429' 2942' do

3114' 2685' do

2938' do

2684' do

2326' do

NEW YORK.

HOBOKEN.

M. & E. R. R.

Erie R.R.

N. Jersey R.R.

Jas. Watt.

Cayuga.

Canal Street.

Desbrosses Street.

238' South of Desbrosses St'r.

478' do

Hubert St. 720' do

985' do

North More St. 1225' do

1465' do

1705' do

1942' do

2185' do

2326' do

Chamber St. 2428' do

2684' do

2938' do

Robinson St. 3173' do

Barclay St. 3428' do

3714' do

3969' do

4189' do

Courtland St. 4453' do

Liberty St. 4721' do

NEW YORK.

Steamboat Cayuga &c.
vs.
The Hoboken Land & Improvement Compy.

N°511. *Page 321.*

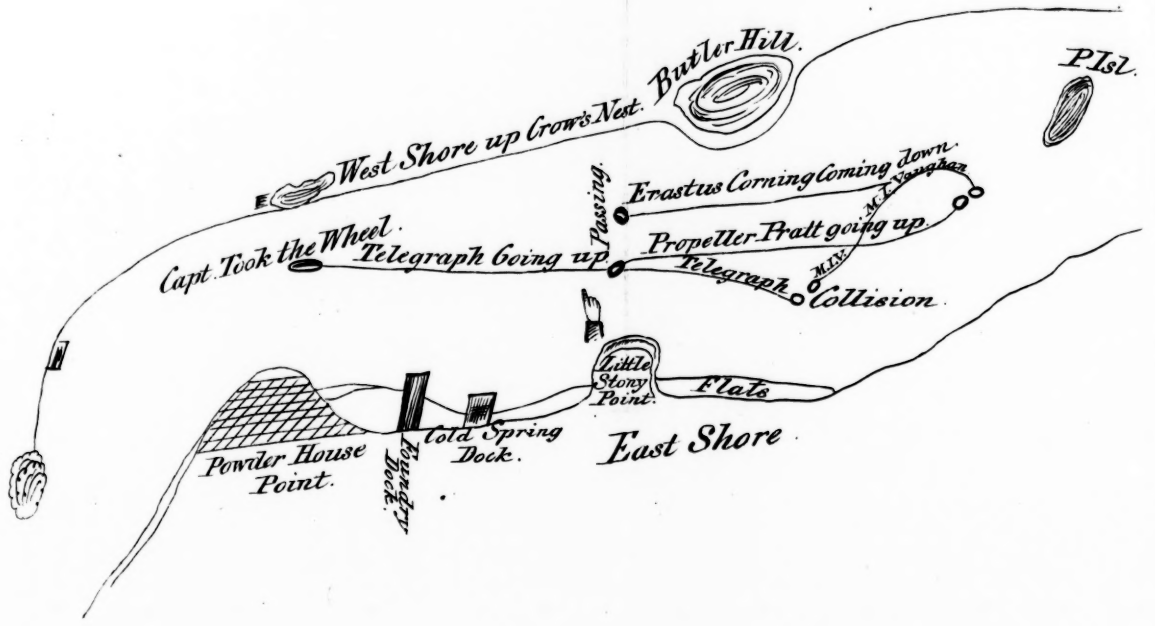


EXHIBIT B. G.F.B.

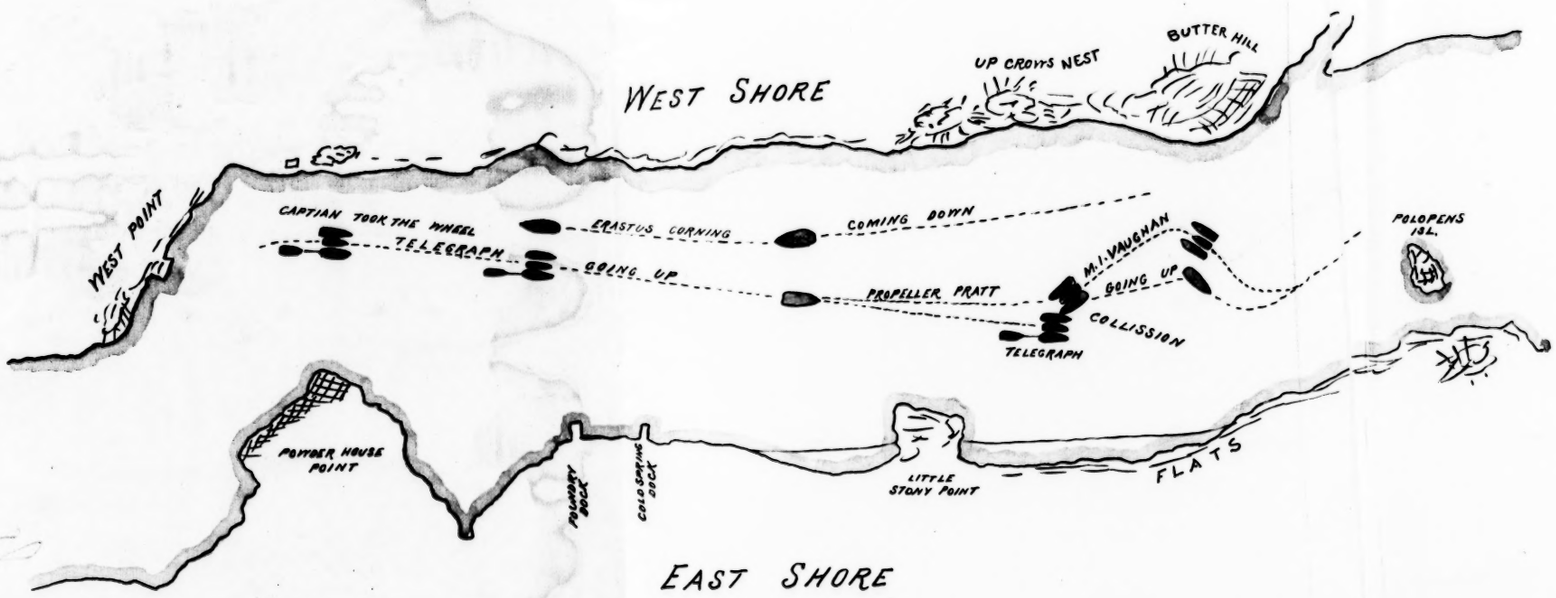
2½ feet above light water.
2½ do. Lenght of hole up & down, 1 foot wide.
3½ feet aft of stem.

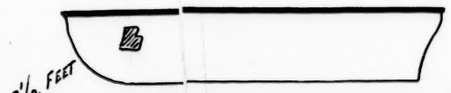
No. 514. The Steamboat Telegraph &c. &al. vs. John Gordon &al.

and

No. 515. The Propeller Mary F. Vaughan &al. vs. John Gordon et al.

Page 749.





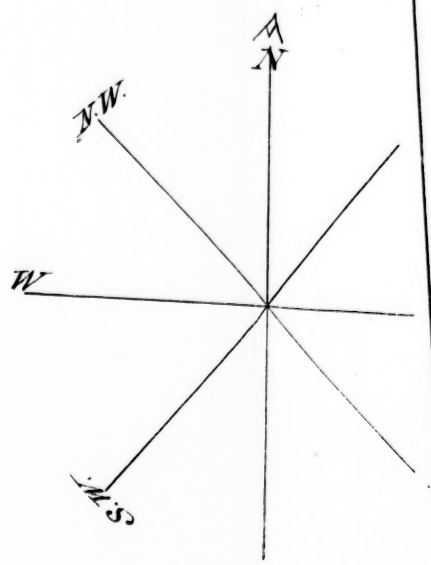
DIMENSIONS of BARGE

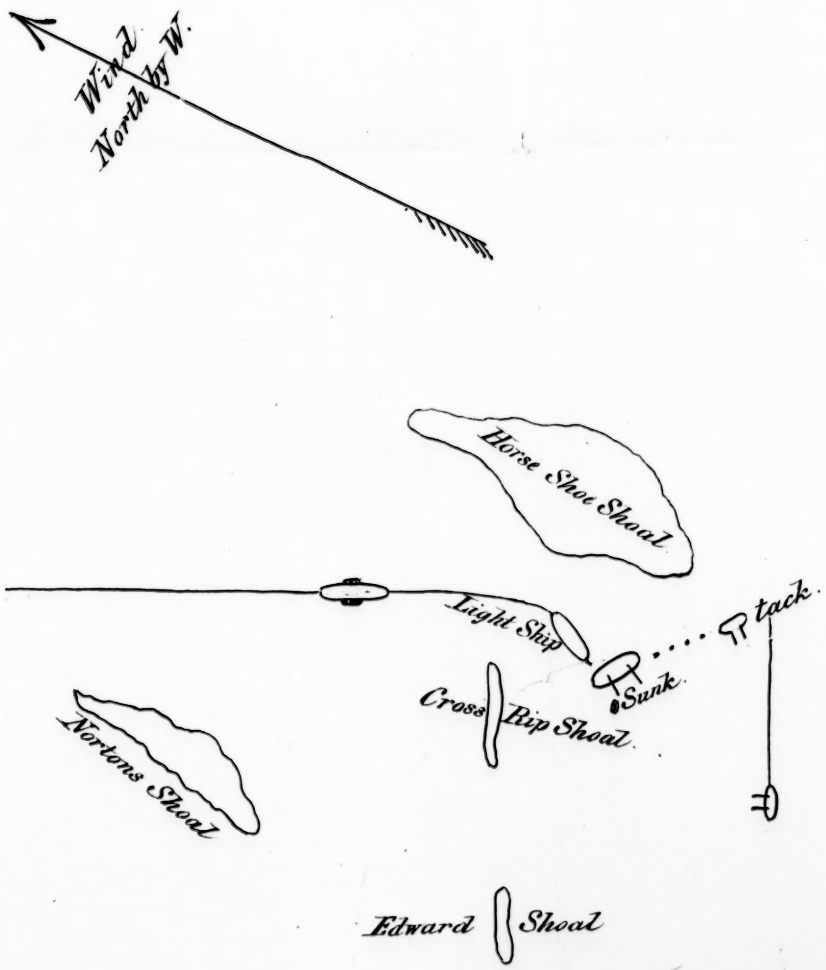
5 FEET LONG 38 FT WIDE or BEAM
. FT. FROM WATER (HEIGHT) TO UPPER DECK

(4)

No. 516. { Steamship Western Metropolis / Hiram Benner Claimant / vs. / John Low, Junior. } Page 34.

No. 1. April 21. 1868.
1 fol. 1911.





HIRAM O. ALDEN, Plaintiff in Error,
vs.
THE FIRST NATIONAL BANK OF CHICOPEE. } Supreme Court of the U. S., Dec. T., 1870.

BRIEF OF DEFENDANT IN ERROR.

The case finds that the note was regularly discounted by the Defendant in Error before maturity. It was therefore held free from all equities by the law of Massachusetts. By the same law a note may be collected from the indorser without a suit against the maker.

The only question of the case is whether the construction of the note as between these parties must be determined by the laws of Illinois.

The indorser is bound by all the provisions of the note, notwithstanding his indorsement was written before the instrument was filled up.

Putnam vs. Sullivan, 4 Mass. 45.
Mitchell vs. Culver, 7 Cowen 336.

And no question was made upon this point at the trial.

The note was first delivered as a valid instrument in Illinois.

But by express terms the contract was to be performed in Massachusetts.

Its construction and legal effect must therefore be determined by the law of Massachusetts.

Story's Conflict of Laws, § 280.
Andrews vs. Pond, 13 Pet. 77.
Musson et al vs. Lake, 4 Howard 278.
Blanchard vs. Bissell, 13 Mass. 4.
Warren vs. Lynch, 5 Johnson 238.
Cox et al vs. United States, 6 Pet. 172–203.

As between the payee and maker this will not be questioned, but a different rule is claimed for the indorser. The only reason for ever making such a distinction is that the indorse ment is treated as a new contract. This reason is wanting where the indorsement is made prior to the original delivery of the note.

The act of indorsement imports among other things, that the maker of a note will pay it at maturity, *according to its tenor*, and also that if he does not, the indorser will.

2 Parsons, Bills and Notes, 23.
Story on Prom. Notes, § 135.

If the note expressly provides for payment at a specified place, *the place of payment* is as much a part of the indorser's contract as any other provision of the instrument.

The indorser in effect says, I will fulfill the contract *in all particulars*, if the maker does not.

If no place for payment is *named*, the indorser impliedly agrees that the maker shall pay it *generally*, and that upon the maker's default he will himself pay it *generally*, that is, in the place where his contract is made.

In that case, the thing especially guaranteed is payment, and not payment at a particular place, the natural construction being that the maker will pay where he made the note, and the indorser where he made the indorsement.

In all the cases which hold that the indorser cannot be charged without a compliance with the law of the place of indorsement, there is no place of payment expressly provided in the note or bill.

Boyce et al vs. Edwards, 4 Peters 123.
Aymar vs. Sheldon et al, 12 Wend. 439.
Musson et al vs. Lake, 4 Howard 278.
Potter et al vs. Brown, 5 East 123—131.
Williams vs. Wade, 1 Met. 82.
Powers vs. Lynch, 3 Mass. 77—80.
Story's Conflict of Laws, § 315.

The mere fact that a bill is drawn upon a person at a place therein named, does not import an undertaking by the indorser to pay it there. On the contrary, it is held in several of the cases last cited that the contract of the indorser upon such a bill is impliedly to be performed where it is made.

The contrary would be true if the bill provided for payment at a particlar place.

Williams vs. Wade, 1 Met. 82, was only an application of the *lex loci contractus* to a contract in which no place of performance was named, and the opinion recognizes a different rule where another place for performance is expressly provided.

Bissell vs. Lewis, 4 Mich. 450, is an authority for the defendent in error which fully covers the case at bar.

The damages which may be recovered against indorsers of a bill of exchange are founded, not upon their contract, but arise *ex mora* or *ex delicto*, and are determined by local law. They may therefore be different against different indorsers.

Story's Conflict of Laws, § 307.

The rate of interest upon a note or bill, being a part of the contract, is determined by the law of the place where, by express terms, it is to be paid.

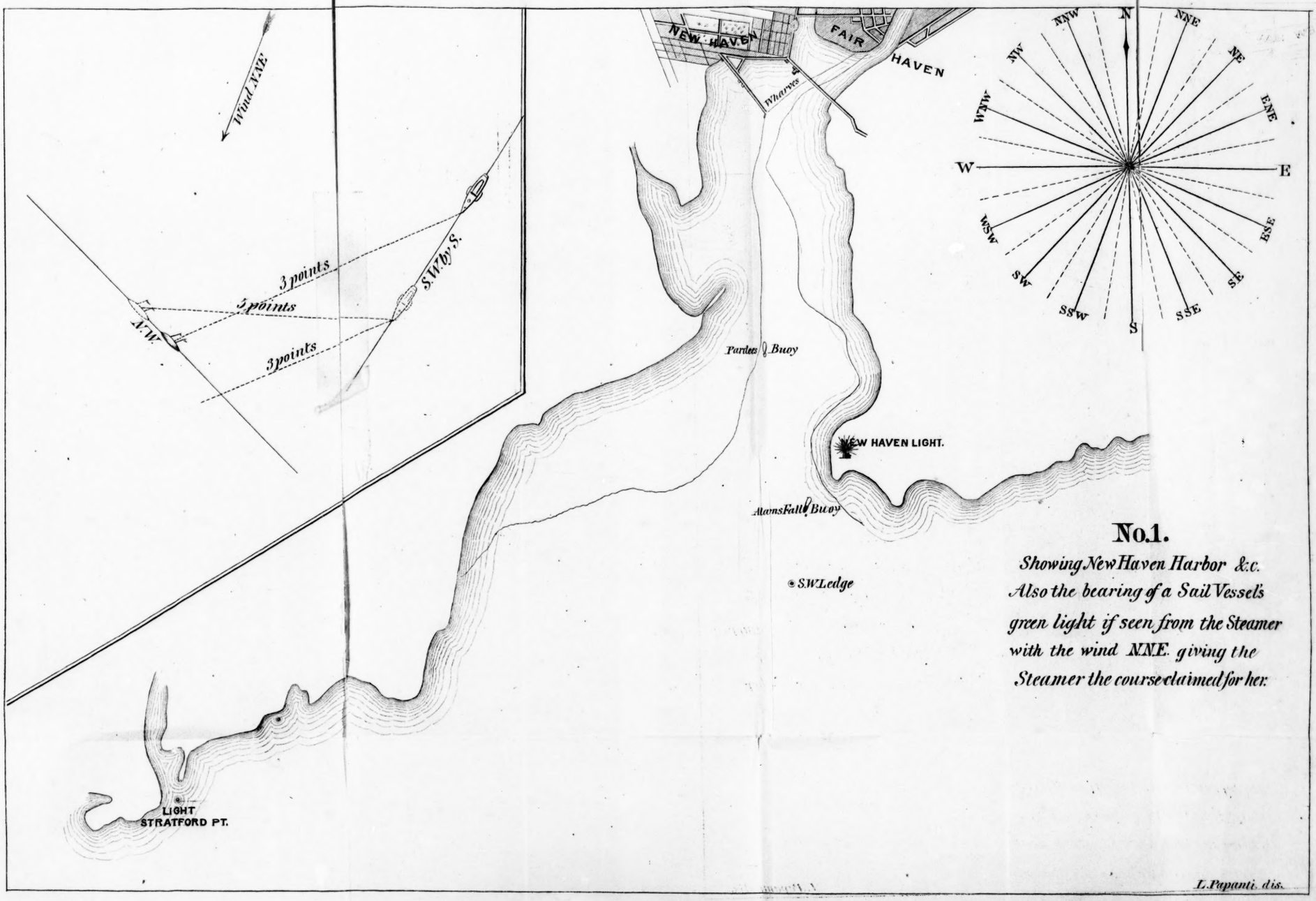
Story's Conflict of Laws, § 294—291, and cases there cited.
Schofield vs. Day, 20 Johns 202.
Fanning vs. Cossequa, 17 Johns 511.

And this against the indorser as well as the maker.

The interests of the community demand that all parties to commercial paper should be bound by the law of the place where they have in terms made it payable.

M. P. KNOWLTON, Att'y for Defendant in Error.

(1)


Wind N.N.E.
3 points
3 points
3 points
S.W.by.S.
N.W.
NEW HAVEN
FAIR
HAVEN
Wharves
Pardee's Buoy
NEW HAVEN LIGHT.
Adams Fall Buoy
S.W. Ledge
LIGHT
STRATFORD PT.
N
NNE
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NNW
No. 1.
Showing New Haven Harbor &c.
Also the bearing of a Sail Vessel's
green light if seen from the Steamer
with the wind N.N.E. giving the
Steamer the course claimed for her.
L. Papanti. dis.

No. 2.

SCALE 1 INCH TO 1000 FEET.

Showing the position of vessels as claimed by Steamer and illustrating Libellants claim that the collision could not have occurred without Propeller's red light appearing in ample time for the Steamer to have cleared her by porting.